

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION

4 OPTIS WIRELESS TECHNOLOGY,)
LLC, PANOPTIS PATENT)
5 MANAGEMENT, LLC, OPTIS)
CELLULAR TECHNOLOGY, LLC,)
6 PLAINTIFFS) CIVIL CASE NO.
VS.) 2:17-CV-123-JRG-RSP
7) MARSHALL, TEXAS
8 HUAWEI TECHNOLOGIES CO. LTD.,)
HUAWEI DEVICE USA, INC.,)
9 HUAWEI DEVICE CO. LTD.,) AUGUST 24, 2018
DEFENDANTS) 9:00 A.M.

10

11 | TRANSCRIPT OF JURY TRIAL

12 BEFORE THE HONORABLE CHIEF JUDGE RODNEY GILSTRAP

UNITED STATES DISTRICT JUDGE

14 APPEARANCES:

15

16 FOR THE PLAINTIFFS: Mr. Samuel F. Baxter
17
18 McKool Smith, PC
104 E. Houston Street
Suite 300
Marshall, Texas 75670

19

20 COURT REPORTER: Ms. Shelly Holmes, CSR, TCRR
21 Official Court Reporter
22 United States District Court
23 Eastern District of Texas
Marshall Division
100 E. Houston
Marshall, Texas 75670
(903) 923-7464

24

25 (Proceedings recorded by mechanical stenography, transcript produced on a CAT system.)

1 FOR THE PLAINTIFFS: Mr. Theodore Stevenson, III
2 Mr. Marcus L. Rabinowitz
3 McKool Smith, PC
300 Crescent Court
Suite 1500
Dallas, Texas 75201
4

5 Mr. Kevin L. Burgess
6 Ms. Lindsay M. Leavitt
7 Mr. Kevin P. Hess
8 Ms. Christine M. Woodin
McKool Smith, PC
300 W. 6th Street
Suite 1700
Austin, Texas 78701

9 Mr. David T. DeZern
10 Gray Reed & McGraw, LLP
11 1601 Elm Street
Suite 4600
Dallas, Texas 75201

12 FOR THE DEFENDANTS: Mr. Robert T. Haslam
13 Mr. Stanley Young
14 Mr. Anupam Sharma
15 Mr. Thomas E. Garten
16 Mr. James Hovard
17 Ms. Tess Hamilton
Covington & Burling, LLP
333 Twin Dolphin Drive
Suite 700
Redwood Shores, California 94065

18 Mr. Heng Gong
19 Covington & Burling, LLP
The New York Times Building
620 Eighth Avenue
20 New York, New York 10018

21 Mr. Paul J. Wilson
22 Mr. Ali Mojibi
23 Mr. Christopher G. Higby
Covington & Burling, LLP
One CityCenter
24 850 Tenth Street, NW
Washington, DC 20001
25

1 FOR THE DEFENDANTS: Mr. Michael C. Smith
2 Siebman Forrest Burg & Smith, LLP
3 113 East Austin Street
4 Marshall, Texas 75670

5 P R O D E E D I N G S

6 (Jury out.)

7 COURT SECURITY OFFICER: All rise.

8 THE COURT: Be seated, please.

9 All right. Are the parties prepared to read into the
10 record the list of -- or the list of items from the list of
11 pre-admitted exhibits that have been used during yesterday's
12 portion of the trial?

13 MR. STEVENSON: We are, Your Honor. We're currently
14 getting it.

15 And if Defendants are ready to go, we'd ask if they
16 could go first in their listing --

17 THE COURT: Are Defendants prepared to go?

18 MR. SMITH: I was going to say the same thing he just
19 said, Your Honor. I apologize.

20 THE COURT: All right. We'll wait a minute.

21 While we're waiting on that, Mr. Smith, I have before
22 me a copy of Huawei's proffer of claim constructions for jury
23 instructions. I assume this is the proffer that you mentioned
24 wanting to make for the record earlier?

25 MR. SMITH: That's correct, Your Honor. That is the

1 proffer of the proposed jury instructions that we would ask the
2 Court to include in the charge rather than the ones that were
3 adopted by the Court from the magistrate judge.

4 THE COURT: All right. Well, I'll -- I'll direct that
5 you file this with the clerk, and I'll accept the proffer, but
6 the request is consistent with the prior claim construction the
7 Court overruled.

8 MR. SMITH: Thank you, Your Honor.

9 MS. WOODIN: Your Honor --

10 MR. STEVENSON: We're prepared to read in our exhibits
11 now.

12 THE COURT: All right. Why don't you proceed to do
13 that, please, Ms. Woodin.

14 MS. WOODIN: Yes, Your Honor.

15 The exhibits used on the record yesterday by
16 Plaintiffs is Plaintiffs' Exhibit 3, and Defendants' Exhibits
17 82, 99, and 100.

18 THE COURT: All right. Any objection to that
19 rendition by Plaintiffs from Defendants?

20 MS. WOODIN: And I'm sorry, Your Honor. Also
21 Defendants' Exhibit 1.

22 THE COURT: All right. Now you're complete?

23 MS. WOODIN: Yes, Your Honor.

24 THE COURT: Okay. Then is there any objection from
25 Defendants?

1 MR. SMITH: No, Your Honor.

2 THE COURT: Do Defendants have a similar rendition to
3 offer?

4 MR. SMITH: Yes, we do, Your Honor.

5 Yesterday the Defendants used the following exhibits:
6 Plaintiffs' Exhibits 10, 57, 60, 81, 82, 83, 99, 103, 117, 288,
7 289, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316,
8 317, 318, 319, 338, 344, 3 -- Your Honor, I apologize. I
9 didn't -- I did not change over from the Plaintiffs' numbers to
10 the Defendants.

11 The numbers that were used yesterday are Plaintiffs'
12 10. And then the following Defendants' exhibits: 57, 60, 81
13 through 83, 99, 103, 117, 288, 289, 306 through 319, 338, 344,
14 345, and 351.

15 And that concludes our offer.

16 THE COURT: Is there any objection to that rendition
17 from Defendants -- excuse me, from Plaintiffs?

18 MS. WOODIN: No, Your Honor.

19 THE COURT: Okay. Are there any other housekeeping
20 matters counsel is aware of that the Court should take up
21 before we proceed and conduct or have the Court conduct the
22 formal charge conference?

23 MR. STEVENSON: None from Plaintiff.

24 MR. SMITH: None from the Defendant.

25 THE COURT: All right. Then let me ask a

1 representative of both sides who's going to -- who are going
2 speak to the issues related to the charge and verdict form to
3 go to the podium. And as is the Court's practice, I will go
4 through page-by-page each of the documents being the final jury
5 instructions and the verdict form. And at any point where we
6 reach a page where counsel for either side believes an
7 objection is appropriate, either because something's been
8 included or something's been omitted, then they're free to make
9 those objections at that point. But going through it
10 page-by-page is the Court's way of making sure we don't
11 overlook or unintentionally miss anything.

12 So, Mr. Stevenson, you're going to speak for
13 Plaintiffs?

14 MR. STEVENSON: Yes, Your Honor.

15 THE COURT: And Mr. Smith for Defendants?

16 MR. SMITH: Yes, Your Honor.

17 THE COURT: All right. Then we'll proceed with the
18 formal charge conference. We'll begin with the final jury
19 instructions.

20 Turning to Page 1 of the final jury instructions as
21 have been provided to the parties by the Court, is there
22 objection from either party?

23 MR. STEVENSON: No objection.

24 MR. SMITH: No objection.

25 THE COURT: Turning then to Page 2, is there objection

1 from either party?

2 MR. STEVENSON: No objection.

3 MR. SMITH: No objection.

4 THE COURT: Page 3, is there objection?

5 MR. SMITH: No objection.

6 MR. STEVENSON: No objection.

7 THE COURT: Page 4, is there objection?

8 MR. STEVENSON: No objection.

9 MR. SMITH: No objection.

10 THE COURT: Page 5, is there an objection?

11 MR. STEVENSON: No objection.

12 MR. SMITH: No objection.

13 THE COURT: Page 6, is there objection?

14 MR. STEVENSON: No objection.

15 MR. SMITH: No objection.

16 THE COURT: Turning then to Page 7, is there
17 objection?

18 MR. STEVENSON: No objection.

19 MR. SMITH: No objection.

20 THE COURT: Page 8, is there any objection?

21 MR. STEVENSON: No objection.

22 MR. SMITH: No objection.

23 THE COURT: Page 9, is there any objection?

24 MR. STEVENSON: No objection.

25 MR. SMITH: No objection.

1 THE COURT: Page 10, is there any objection from
2 either party?

3 MR. STEVENSON: No objection.

4 MR. SMITH: No objection.

5 THE COURT: Page 11, is there objection?

6 MR. STEVENSON: No objection.

7 MR. SMITH: No objection.

8 THE COURT: Page 12, is there objection?

9 MR. STEVENSON: No objection.

10 MR. SMITH: No objection.

11 THE COURT: Page 13, is there objection?

12 MR. STEVENSON: No objection.

13 MR. SMITH: No objection.

14 THE COURT: Page 14, is there objection?

15 MR. STEVENSON: No objection.

16 MR. SMITH: No objection.

17 THE COURT: Page 15, is there objection?

18 MR. STEVENSON: No objection.

19 MR. SMITH: No objection.

20 THE COURT: Page 16, is there objection?

21 MR. STEVENSON: No objection.

22 MR. SMITH: No objection.

23 THE COURT: Page 17, is there objection?

24 MR. STEVENSON: No objection.

25 MR. SMITH: No objection.

1 THE COURT: Page 18, is there objection?

2 MR. STEVENSON: No objection.

3 MR. SMITH: No objection.

4 THE COURT: Page 19, is there objection?

5 MR. STEVENSON: No objection.

6 MR. SMITH: No objection.

7 THE COURT: Page 20, is there objection?

8 MR. STEVENSON: No objection.

9 MR. SMITH: No objection.

10 THE COURT: Page 21, is there objection?

11 MR. STEVENSON: No objection.

12 MR. SMITH: No objection.

13 THE COURT: And, counsel, on Pages 20 and 21, I'll
14 note for the record that therein are the various
15 Georgia-Pacific factors that the Court intends to charge the
16 jury on. It's clear that that is less than all of the 15
17 factors.

18 Do both Plaintiffs and Defendants agree that these are
19 the proper Georgia-Pacific factors to charge the jury on and
20 that the Court should not charge the jury on those factors not
21 set forth on Pages 20 and 21 of the final jury instructions?

22 MR. STEVENSON: Plaintiff agrees.

23 MR. SMITH: Defendant agrees.

24 THE COURT: All right. Moving on then to Page 22.

25 MR. STEVENSON: No objection.

1 THE COURT: Is there objection from either party?

2 MR. SMITH: No objection.

3 THE COURT: Page 23, is there objection?

4 MR. STEVENSON: No objection.

5 MR. SMITH: No objection.

6 THE COURT: Page 24?

7 MR. STEVENSON: Plaintiffs object to the royalty
8 stacking instruction in the second to the last paragraph.

9 THE COURT: All right. That objection is overruled.

10 Is there any objection from Defendants?

11 MR. SMITH: No objection.

12 MR. STEVENSON: And, Your Honor, just to state the
13 basis -- the basis of the royalty stacking instruction, for the
14 record, is that under Ericsson versus D-Link, an instruction is
15 not appropriate for royalty stacking when the accused infringer
16 does not put in evidence of their actual stack, which Huawei
17 has failed to do.

18 THE COURT: All right. The Court's ruling is the
19 same. The objection of Plaintiffs is overruled.

20 We'll turn then to Page 25 of the final jury
21 instructions. Is there any objection from either party?

22 MR. STEVENSON: No objection.

23 MR. SMITH: No objection.

24 THE COURT: Turning then to Page 26, is there
25 objection?

1 MR. STEVENSON: No objection.

2 MR. SMITH: No objection.

3 THE COURT: Page 27, is there objection?

4 MR. STEVENSON: Objection from Plaintiffs to the
5 instruction regarding a lump-sum royalty, and that objection
6 also goes to the damages blank on the verdict form -- not the
7 damages blank, excuse me, the reasonable royalty or lump-sum
8 question in the damages question of the verdict form.

9 THE COURT: And we'll get to the verdict form
10 separately.

11 MR. STEVENSON: All right.

12 THE COURT: But the Court -- go ahead.

13 MR. STEVENSON: If the Court would permit, I'd like to
14 address the Court for a moment on that -- on the issue of lump
15 sum.

16 THE COURT: Just give me a succinct statement of the
17 basis for your objection.

18 MR. STEVENSON: Yes, Your Honor.

19 There's no evidence to support a lump-sum verdict.
20 Both experts calculated a per unit royalty, albeit from
21 different sources, but both ended up with a per phone royalty
22 under each of the patents, and then they applied that to a
23 royalty base in Plaintiffs' Exhibit 2050 that was merely
24 through the date of trial -- actually shortly before the date
25 of trial. So there was no evidence, no testimony in the record

1 that a lump sum, fully paid up exhausting patent rights beyond
2 the expiration was part of anybody's damages calculation, and
3 we don't feel that would be appropriate because there are --
4 there just isn't evidence to support it.

5 The methodologies were remarkably consistent in
6 applying it to an agreed-upon royalty base, with no testimony
7 about lump sum or any of that. And that royalty base does not
8 extend past trial.

9 THE COURT: All right. Plaintiffs' objection, as
10 stated in the record by Mr. Stevenson, is overruled.

11 Are there other matters that either party wishes to
12 object to on Page 27 of the final jury instructions?

13 MR. STEVENSON: None from Plaintiff.

14 MR. SMITH: None from Defendant, Your Honor.

15 THE COURT: Then we'll turn to Page 28. Are there
16 objections from either party here?

17 MR. STEVENSON: No objection.

18 MR. SMITH: No objection.

19 THE COURT: Page 29, are there objections?

20 MR. STEVENSON: No objection.

21 MR. SMITH: No objection.

22 THE COURT: Page 30, are there objections?

23 MR. STEVENSON: No objection.

24 MR. SMITH: No objection.

25 THE COURT: Page 31 and 32 comprise Exhibit A to the

1 final jury instructions. Is there objection to any portion of
2 Exhibit A?

3 MR. STEVENSON: No objections.

4 MR. SMITH: No objection.

5 THE COURT: Pages 33 and 34 comprise Exhibit B to the
6 final jury instructions. Is there objection to any portion of
7 Exhibit B?

8 MR. STEVENSON: No objection.

9 MR. SMITH: No objection.

10 THE COURT: Page 35, being the last page of the final
11 jury instructions, sets forth Exhibit C to the final jury
12 instructions. Is there any objection to any portion of
13 Exhibit C?

14 MR. STEVENSON: No objections.

15 MR. SMITH: No objection.

16 THE COURT: All right. That will complete the final
17 charge conference with regard to the final jury instructions.

18 And we'll next turn to, as a part of the final
19 charge -- formal charge conference, I should say, verdict form.
20 Turning to the verdict form that the Court's furnished to the
21 parties, and based upon the input, as was the final jury
22 instructions from the informal charge conference held yesterday
23 evening with counsel for all parties, we'll turn to Page 1 of
24 the verdict form.

25 Is there objection from either party as to anything

1 set forth or omitted from Page 1 of the verdict form?

2 MR. STEVENSON: No objection.

3 MR. SMITH: No objection.

4 THE COURT: Page 2, is there any objection?

5 MR. STEVENSON: No objection.

6 MR. SMITH: No objection.

7 THE COURT: Page 3, is there any objection?

8 MR. STEVENSON: No objection.

9 MR. SMITH: No objection.

10 THE COURT: Page 4, where Question 1 to the jury is
11 located, is there any objection?

12 MR. STEVENSON: No objection.

13 MR. SMITH: No objection.

14 THE COURT: Next is Page 5, wherein Question 2 to the
15 jury is located. Is there any objection?

16 MR. STEVENSON: No objection.

17 MR. SMITH: No objection.

18 THE COURT: Page 6 is next, wherein Question 3 to the
19 jury is located. Is there any objection?

20 MR. STEVENSON: No objection.

21 MR. SMITH: No objection.

22 THE COURT: Next is Page 7. Is there any objection
23 from either party?

24 MR. STEVENSON: No objection.

25 MR. SMITH: No objection.

1 THE COURT: Next is Page 8, wherein Question 4 is
2 located. Is there any objection?

3 MR. STEVENSON: Plaintiffs object to the question
4 asking if the amounts are a lump sum or a running royalty, for
5 the basis previously articulated that there's no evidence to
6 support a lump sum. We'd also object that neither party has
7 articulated a lump sum and would also object that a jury should
8 not be able to exhaust future rights in a United States patent,
9 that that is a matter as to future infringement for the Court,
10 not the jury.

11 THE COURT: All right. The objection of Plaintiffs
12 with regard to Page 8 of the verdict form is overruled.

13 Is there any objection to Page 8 from the Defendants?

14 MR. SMITH: No, Your Honor.

15 THE COURT: Turning then to Page 9 which is the final
16 page of the verdict form, is there objection from either party?

17 MR. STEVENSON: No objections.

18 MR. SMITH: No objection.

19 THE COURT: All right. That that will complete the
20 final charge conference as to the verdict form, and, in fact,
21 completes the final charge conference as a whole.

22 Counsel, as you're aware, it's the Court's practice to
23 prepare and generate eight final hard copies of the final jury
24 instructions so that those may be sent back to the jury, along
25 with one clean copy in hard copy form of the verdict form. It

1 will take Court a few minutes to do that.

2 It's my intention to recess and produce those copies,
3 after which I intend to return, bring in the jury, and proceed
4 to give the jury my final jury instructions and then hear
5 closing arguments from counsel for Plaintiffs and Defendants.

6 Am I correct that Mr. Burgess will present the first
7 closing argument for Plaintiffs, followed by a second closing
8 argument from Mr. Stevenson?

9 MR. STEVENSON: Correct.

10 THE COURT: And I trust, Mr. Stevenson, Plaintiffs are
11 aware that the Court's practice is that of the 30 minutes
12 allotted, at least 15 minutes or half of the time must be used
13 in the first closing argument from Plaintiffs?

14 MR. STEVENSON: We are aware.

15 THE COURT: All right. And am I correct, Mr. Haslam,
16 you'll present the closing argument for Defendants?

17 MR. SMITH: That's correct, Your Honor.

18 THE COURT: Okay. One thing I do want to say to those
19 of you present before I recess, the Court considers its final
20 instructions to the jury and closing arguments of counsel to be
21 the most serious part of a very serious process.

22 Consequently, once I begin my final jury instructions,
23 which will be followed by closing arguments, I will insist upon
24 a bare minimum of any movement coming and going from the
25 courtroom.

1 Those of you in the gallery are welcome to be here,
2 but I will not have any disruptions. I do not want to hear
3 shuffling papers. I do not want to see people fumbling through
4 backpacks looking for things. I do not want to see people
5 coming and going, and though they try to be quiet, opening and
6 closing the doors, inevitably they cause noise and an
7 accompanying disruption.

8 If anyone is going to be present in the gallery during
9 my instructions and closing arguments, make sure you have
10 visited the restroom beforehand. Do what you can and what you
11 need to to make sure that you can be as still and as quiet as
12 possible throughout the entire process.

13 I think the trial itself, the issues before the Court
14 and the jury warrant that kind of seriousness, and I'm going to
15 insist on it as we go through the final jury instructions and
16 final closing -- or closing arguments by counsel.

17 All right. With that, the Court stands in recess.

18 COURT SECURITY OFFICER: All rise.

19 (Recess.)

20 (Jury out.)

21 COURT SECURITY OFFICER: All rise.

22 THE COURT: Be seated, please.

23 Before I bring in the jury, let me ask, Mr. Burgess,
24 and, Mr. Stevenson, what would Plaintiff desire with regard to
25 a warning from the Court regarding your time?

1 MR. BURGESS: 15 minutes, Your Honor.

2 THE COURT: When you've used 15 minutes?

3 MR. BURGESS: Yes, sir.

4 MR. STEVENSON: And, Your Honor, I'd like to get a
5 warning with three minutes left.

6 THE COURT: Three minutes left.

7 MR. STEVENSON: And may I ask the Court one question
8 about demonstratives?

9 THE COURT: All right.

10 MR. STEVENSON: Prior to Mr. Burgess's portion of the
11 closing, may we have leave to put the foam boards with the red
12 checkmarks up on that easel?

13 THE COURT: That's not a problem. Do you intend the
14 easel to stay where it is, or are you planning on moving it?

15 MR. STEVENSON: We intend it to stay where it is.

16 THE COURT: All right. Then with regard to putting up
17 or taking down boards, just do that as you are prepared to.
18 And when you're ready, we'll follow the same practice as we
19 have through the trial. When you finish your argument, and if
20 you've put something and left it up on the easel, take it down,
21 turn it around. But other than that, that's fine.

22 MR. STEVENSON: Thank you.

23 THE COURT: Mr. Haslam, would you like a warning on
24 your time, and if so, what?

25 MR. HASLAM: I think a warning when I have 40 minutes

1 left.

2 THE COURT: 40 minutes left?

3 MR. HASLAM: I'll take a five -- five-minute warning,

4 Your Honor.

5 THE COURT: Five minutes remaining, I will warn you.

6 All right. Anything else before I bring in the jury?

7 If not, Mr. Nance, please bring in the jury.

8 COURT SECURITY OFFICER: All rise for the jury.

9 (Jury in.)

10 THE COURT: Good morning, ladies. Welcome back.

11 Please have a seat.

12 Members of the jury, you've now heard the evidence in
13 this case, and I'll now instruct you on the law that you must
14 apply. Each of you are going to have your own hard copy of
15 these final jury instructions to take with you to the jury
16 room. So you certainly can take notes if you want to, but you
17 need to know that you'll each have your own copy of these
18 instructions when you retire to deliberate.

19 It's your duty to follow the law as I give it to you.
20 On the other hand, and as I've -- and as I've said previously,
21 you, the jury, are the sole judges of the facts in this case.

22 Do not consider any statement that I've made in the
23 course of the trial or may make during these instructions as an
24 indication to you that I have any opinion about the facts in
25 this case.

1 You're about to hear closing arguments from the
2 attorneys. Statements and arguments of the attorneys, I remind
3 you, are not evidence, and they are not instructions on the
4 law. They're intended only to assist the jury in understanding
5 the evidence and the parties' contentions.

6 A verdict form has been prepared for you. You'll take
7 this verdict form with you when you retire to the jury room,
8 and when you have reached a unanimous decision or agreement as
9 to the verdict, you'll have your foreperson fill in the blanks
10 in the verdict form reflecting those unanimous agreements.
11 Then your foreperson will sign and date the verdict form.

12 Answer each question in the verdict form from the
13 facts as you find them to be. Do not decide who you think
14 should win this case and then answer the questions to reach
15 that result. Again, your answers and your verdict must be
16 unanimous.

17 In determining whether any fact has been proven in
18 this case, you may, unless otherwise instructed, consider the
19 testimony of all the witnesses, regardless of who may have
20 called them, and you may consider the effect of all the
21 exhibits received and admitted into evidence, regardless of who
22 may have produced or presented them.

23 You, the jury, are the sole judges of the credibility
24 of each and every witness and the weight and effect to be given
25 to all the evidence in this case.

1 As I've previously told you, the attorneys in this
2 case are acting as advocates for their respective and competing
3 parties. They have a duty to object when they believe evidence
4 is offered that should not be admitted under the rules of the
5 Court.

6 In that case, when the Court has sustained an
7 objection to a question addressed to a witness, you must
8 disregard that question entirely, and you may draw no
9 inspection -- and you may draw no inference from its wording or
10 speculate about what the witness would have said if the Court
11 had permitted them to answer the question.

12 But, on the other hand, if an objection was overruled,
13 then you're to treat the answer to the question and the
14 question itself just as if no objection had been made; that is,
15 like any other question and answer throughout the trial.

16 Now, at times during the course of the trial, it's
17 been necessary for the Court to talk to the lawyers here at the
18 bench and outside of your hearing or to talk to them -- talk to
19 them when you were outside of the courtroom. This happens
20 because there are times in trials like this when things arise
21 that do not directly involve the jury. You should not
22 speculate, ladies of the jury, about what was said during such
23 discussions that took place outside of your presence.

24 Now, there are two types of evidence that you may
25 consider in properly finding the truth as to the facts in this

1 case. One is direct evidence, such as the testimony of an
2 eyewitness. The other is indirect or circumstantial evidence,
3 that is, the proof of a claim -- a chain, rather, of
4 circumstances that indicates the existence or nonexistence of
5 certain other facts.

6 As a general rule, you should know that the law makes
7 no distinction between direct and circumstantial evidence but
8 simply requires that you, the jury, find the facts based on all
9 the evidence presented, both direct and circumstantial.

10 The parties have stipulated or agreed to some facts in
11 the case, and a list of those stipulations has been included in
12 each of your juror notebooks. When the lawyers for both sides
13 stipulate as to the existence of a fact, you must, unless
14 otherwise instructed, accept the stipulation as evidence and
15 regard the fact as proven.

16 Certain testimony during the course of the trial has
17 been presented to you through what we call depositions. A
18 deposition is the sworn, recorded answers to questions asked to
19 a witness in advance of the trial. If a witness cannot be
20 present to testify in person, the witness's testimony may be
21 presented under oath in the form of a deposition.

22 As I told you earlier, before the trial began, the
23 attorneys representing all the parties questioned these
24 deposition witnesses under oath. At that time, a court
25 reporter was present, and the witnesses were sworn. Deposition

1 testimony is entitled to the same consideration by you as
2 testimony given by a witness in person from the witness stand
3 in open court.

4 As a result, you should judge the credibility and
5 importance of deposition testimony to the best of your ability
6 just as if the witness had testified to you in person in open
7 court.

8 Now, while you should consider only the evidence in
9 this case, you should understand, ladies, that you are
10 permitted to draw such reasonable inferences from the testimony
11 and the exhibits as you feel are justified in the light of
12 common experience.

13 In other words, members of the jury, you may make
14 deductions and reach conclusions that reason and common sense
15 lead you to draw from the facts that have been established by
16 the testimony and the evidence in this case.

17 However, you should not base your decision on any
18 evidence not presented by the parties in open court during the
19 course of the trial, including your own personal experiences.

20 Now, unless I instruct you otherwise, you may properly
21 determine that the testimony of a single witness is sufficient
22 to prove any fact, even if a greater number of witnesses may
23 have testified to the contrary, if considering all of the other
24 evidence you believe that single witness.

25 When knowledge of a technical subject may be helpful

1 to the jury, a person who has special training and experience
2 in that technical field, called an expert witness, is permitted
3 to state his or her opinions on those technical matters to the
4 jury.

5 However, you should understand you're not required to
6 accept those opinions. As with any other witness, it's solely
7 up to you to decide who you believe and who you don't believe
8 and whether or not you want to rely or not rely on their
9 testimony.

10 Now, during the course of the trial, certain exhibits
11 have been shown to you that were illustrations. We call these
12 type of exhibits demonstrative exhibits. Often they're simply
13 called, for short, demonstratives.

14 Demonstrative exhibits are a party's description,
15 picture, drawing, or model to describe something involved in
16 the trial.

17 If your recollection of the evidence differs from the
18 demonstratives, you should rely on your recollection.
19 Understand, demonstrative exhibits, which are sometimes called
20 jury aids, are not evidence themselves, but the witness's
21 testimony when they use a demonstrative is evidence.

22 In any legal action, facts must be proven by a
23 required amount of evidence known as the burden of proof. The
24 burden of proof in this case is on the Plaintiffs for some
25 issues, and it's on the Defendants for other issues.

1 There are two burdens of proof that you'll apply in
2 this case, the preponderance of the evidence and clear and
3 convincing evidence.

4 The Plaintiffs in this case, Optis Wireless Technology
5 LLC, PanOptis Patent Management LLC, and Optis Cellular
6 Technology LLC, who I'll refer to and have referred to
7 throughout the trial collectively as the Plaintiffs or simply
8 PanOptis, have the burden of proving patent infringement by a
9 preponderance of the evidence.

10 PanOptis also has the burden of proving willful patent
11 infringement by a preponderance of the evidence.

12 And PanOptis also has the burden of proving damages
13 for any patent infringement by a preponderance of the evidence.

14 A preponderance of the evidence means evidence that
15 persuades you that a claim is more probably true than not true.
16 Sometimes this is talked about as being the greater weight and
17 degree of credible testimony.

18 The Defendants in this case, Huawei Device USA, Inc.,
19 and Huawei Device (Shenzhen) Company Limited, who I've referred
20 to and will refer to collectively as Huawei or as the
21 Defendants, have the burden of proving patent invalidity by
22 clear and convincing evidence.

23 Clear and convincing evidence means evidence that
24 produces in your mind an abiding conviction that the truth of
25 the parties' factual contentions are highly probable. Although

1 proof to an absolute certainty is not required, the clear and
2 convincing evidence standard requires a greater degree of
3 persuasion than is necessary for the preponderance of the
4 evidence standard.

5 If the proof establishes in your mind an abiding
6 conviction in the truth of the matter, then the clear and
7 convincing evidence standard has been met.

8 These standards are different from what you've learned
9 about in criminal proceedings where a fact must be proven
10 beyond a reasonable doubt.

11 On a scale of the various standards of proof, as you
12 move from the preponderance of the evidence, where the proof
13 need only be sufficient to tip the scales in favor of the party
14 proving a fact, to the other end of the spectrum, beyond a
15 reasonable doubt, where the fact must be proven to a very high
16 degree of certainty, you can think of clear and convincing
17 evidence as being between those two points on the spectrum.

18 In determining whether any fact has been proved by a
19 preponderance of the evidence or by clear and convincing
20 evidence, you may, unless otherwise instructed, consider the
21 stipulations of the parties, the testimony of all the
22 witnesses, regardless of who called them, and all the exhibits
23 that have been received into evidence by the Court during the
24 course of the trial, regardless of who may have produced them.

25 Now, as I did at the start of the case, I'll first

1 give you a summary of each side's contentions. I'll then
2 provide you with detailed instructions on what each side must
3 prove to win on each of its contentions.

4 As I've told you previously, this is an action
5 alleging patent infringement. The case concerns five separate
6 United States patents.

7 They are:

8 United States Patent 6,604,216, which we've referred
9 to throughout the trial as the '216 or the '216 patent.

10 United States Patent 7,769,238, which we referred to
11 throughout the trial as the '238 or the '238 patent.

12 United States Patent 8,208,569, which we have referred
13 to throughout the trial as the '569 patent or the '569 patent.

14 United States Patent 8,385,284, which we've referred
15 to throughout the trial as the '284 patent or the '284 patent.

16 And United States Patent 8,437,293, which we've
17 referred to throughout the trial as the '293 or the '293
18 patent.

19 I will refer to these patents collectively as the
20 patents-in-suit or as the asserted patents. And in so doing,
21 I'm referring to all five of them, as I told you, collectively.

22 Now, the Plaintiff, PanOptis, contends that the
23 Defendants, Huawei, directly infringed the following claims of
24 the patents-in-suit:

25 Claim 1 of the '216 patent.

1 Claim 1 of the '238 patent.

2 Claims 11 and 17 of the '569 patent.

3 Claim 1 of the '284 patent.

4 And Claim 14 of the '293 patent.

5 These are the asserted claims.

6 The Plaintiffs, PanOptis, seeks money damages from the
7 Defendants, Huawei, for allegedly infringing all of the
8 asserted claims by making, using, selling, or offering for sale
9 within the United States and/or importing into the United
10 States products that PanOptis argues are covered by those
11 claims.

12 For the '216, '569, '284, and '293 patents, Huawei's
13 accused products are those listed on Exhibit A that I've
14 attached to these instructions. And as I've told you, you'll
15 each have a copy of these instructions, including the exhibits
16 attached to it.

17 For the '238 patent, Huawei's accused products are
18 those listed in Exhibit B that's been attached to these
19 instructions.

20 Huawei, the Defendants, denies that they have
21 infringed any claim of the asserted patents. Huawei contends
22 that during the terms of these patents, it did not make, sell,
23 use, or offer for sale within the United States or import into
24 the United States any product that infringes any of the
25 asserted claims of the asserted patents.

1 Huawei also denies that PanOptis is entitled to any
2 damages.

3 Huawei contends that all of the asserted claims of all
4 of the asserted patents are invalid as obvious in view of prior
5 art that existed before PanOptis's alleged inventions.

6 Let me say that again. Huawei contends that all the
7 asserted claims of all the asserted patents are invalid as
8 obvious in view of prior art that existed before PanOptis's
9 patents were effective, and, therefore, all the asserted claims
10 of all the asserted patents in this case are invalid.

11 You should understand invalidity is a defense to
12 infringement. Invalidity and infringement are separate and
13 distinct issues, however.

14 Your job is to decide whether Huawei has infringed any
15 of the asserted claims of the asserted patents and whether any
16 of the asserted claims are invalid.

17 If you decide that any claim of any asserted patent
18 has been infringed and is not invalid, you'll then have to
19 decide what amount of money damages should be awarded to
20 PanOptis to compensate it for that infringement.

21 You'll also need to make a finding as to whether that
22 infringement was willful. If you decide that any infringement
23 was willful, that decision should not affect any of the damages
24 that you award.

25 I will take willfulness into account later.

1 Before you can decide many of the issues in this case,
2 you'll need to understand the role of the patent claims. The
3 patents -- excuse me, the patent claims are the numbered
4 sentences at the end of each patent. The claims are important
5 because it's the words of the claims that define what a patent
6 covers. The figures and the text in the rest of the patent
7 provide a description and/or examples of the invention, and
8 they provide a context for the claims, but it is the claims,
9 ladies of the jury, that define the breadth of the patent's
10 coverage.

11 Each claim is effectively treated as if -- as if it
12 were its own separate patent, and each claim may cover more or
13 cover less than any other claim. Therefore, what a patent
14 covers depends, in turn, on what each of its claims covers.

15 Now, you will first need to understand what each claim
16 covers in order to decide whether or not there is infringement
17 of any claim and to decide whether or not the claim is invalid.

18 The law says that it's my role to define the terms of
19 the claims, and it's your role to apply my definitions to the
20 issues that you are asked to decide in this case. Therefore,
21 as I explained to you at the start of the trial, I have already
22 determined the meanings of some of the claim terms in this case
23 and have provided them to you with my constructions or
24 definitions to those construed terms, and those have been
25 included in your juror notebooks.

1 You must accept my definitions or constructions of
2 those words in the claims as being correct.

3 It's your job to take these definitions that I have
4 given you and apply them to the issues that you are deciding,
5 including the issues of infringement and validity.

6 You should disregard any evidence presented at trial
7 that contradicts or is inconsistent with the constructions and
8 definitions that I have given you.

9 For the claim terms that I have not construed or
10 defined, you are to apply and use the plain and ordinary
11 meaning of the terms as understood by one of ordinary skill in
12 the art; that is, in the field of the technology of the patent
13 at the time of the alleged invention.

14 The meaning of the words in the patent claims must be
15 the same when you decide the issues of both infringement and
16 invalidity.

17 I'll now explain to you how a claim defines what it
18 covers.

19 A claim sets forth, in words, a set of requirements.
20 Each claim sets forth its requirements in a single sentence.
21 If a device or method satisfies each of the requirements, then
22 it is -- then it is said to cover that claim and it infringes
23 that claim.

24 There can be several claims in a patent. Each claim
25 may be narrower or broader than another claim by setting forth

1 more or fewer requirements. The coverage of a patent is
2 assessed on a claim-by-claim basis.

3 In patent law, the requirements of a claim are often
4 referred to as the claim elements, and they're often sometimes
5 called the claim limitations.

6 When a thing, such as a product or process, meets all
7 of the requirements of a claim, the claim is said to cover that
8 thing, and that thing is said to fall within the scope of that
9 claim. In other words, a claim covers a product or process
10 where each of the claim elements or limitations is present in
11 that product or process.

12 If a product or process is missing even one limitation
13 or element of a claim, then that product or process is not
14 covered by the claim. And if the product or process is not
15 covered by the claim, then it does not infringe that claim.

16 Now, the beginning portion or preamble of a number of
17 the claims in this case use the word "comprising." The word
18 "comprising," when used in a preamble, means including but not
19 limited to or containing but not limited to.

20 When comprising is used in the preamble of a claim, a
21 device that includes all the limitations of the claim is
22 covered by the claim, even if the device covers additional
23 elements. For example, a claim to a table comprising a
24 tabletop, legs, and glue would be infringed by a table that
25 includes a tabletop, legs and glue, even if it also contains

1 other features, such as wheels on the ends of the legs.

2 Now, this type of case involves two types of patent
3 claims: Independent claims and dependent claims.

4 An independent claim, ladies of the jury, does not
5 refer to any other claim in the patent. An independent claim
6 sets forth all the requirements that must be met in order to be
7 covered by that claim. Therefore, it's not necessary to look
8 at any other claim to determine what an independent claim
9 covers.

10 However, a dependent claim does not itself recite all
11 the requirements of the claim but refers to one or more other
12 claims, at least one of which is an independent claim for some
13 of its requirements.

14 In this way, the claim depends from the other claim,
15 hence the term "dependent claim."

16 A dependent claim incorporates all the requirements of
17 the claim or claims to which it refers, or said another way,
18 from which it depends, as well as the requirements within the
19 dependent claim itself. The dependent claim adds its own
20 requirements to the claim or claims to which it refers.

21 To determine what a dependent claim covers, it's
22 necessary to look at both the dependent claim and the other
23 claim or claims to which it refers, or said another way, from
24 which it depends.

25 A product or a process that meets all the requirements

1 of both the dependent claim and the claim or claims to which it
2 refers or from which it depends is covered by the dependent
3 claim.

4 For each of the asserted claims in this case, their
5 independence or dependence is as follows:

6 For the '216 patent, Claim 1 is an independent claim;

7 For the '238 patent, Claim 1 is an independent claim;

8 For the '569 patent, Claim 11 is an independent claim,
9 but Claim 17 is a dependent claim;

10 For the '284 patent, Claim 1 is an independent claim;
11 and

12 For the '293 patent, Claim 14 is a dependent claim.

13 Please note while dependent Claim 14 for patent '293
14 depends from Independent Claim 12, Independent Claim 12 is not
15 an asserted claim in this case and should not be -- and should
16 only be, rather, considered in the context of Claim 14's
17 dependency upon it.

18 Now, certain claims use the phrase "means for." This
19 "means for" phrase has a special meaning in patent law. It's
20 called a means-plus-function requirement. It does not cover
21 all the structures that could perform the function set forth in
22 the claim. Instead, it covers a structure or set of structures
23 that performs that function and that is either identical or
24 equivalent to the structures described in the patent for
25 performing the function.

1 The issue of whether two structures are identical or
2 equivalent is for you to decide. I'll explain to you later how
3 to determine whether two structures or two sets of structures
4 are equivalent to one another.

5 In the claim construction section of your juror
6 notebooks, I've identified the structures described in the
7 patents for performing the relevant functions. You should
8 apply my definitions to those functions and the structures
9 described in the patent for performing them, and you should --
10 and as you would, rather, as you would apply my definition to
11 any other claim term.

12 Now, a patent owner has the right to stop others from
13 using the invention covered by its patent claims in the United
14 States during the life of the patent. If any person makes,
15 uses, sells, or offers for sale within the United States or
16 imports into the United States what is covered by the patent
17 claims without the patent owner's permission, that person is
18 said to infringe the patent.

19 In reaching your decision on infringement, keep in
20 mind, ladies, that only the claims of a patent can be
21 infringed. You must compare the asserted claims, as I've
22 defined each of them, to the accused products and determine
23 whether or not there is infringement.

24 You should not compare the accused products with any
25 specific example set out in the patent or with the patent

1 owner's commercial products or with any prior art in reaching
2 your decision on infringement.

3 The only correct comparison is between the accused
4 products and the language of the claims themselves, as the
5 Court has construed or defined them.

6 You must reach your decision as to each assertion of
7 infringement based on my instructions about the meaning and
8 scope of the claims, the legal requirements for infringement,
9 and the evidence that's been presented to you by the parties
10 over the course of the trial.

11 The issue of infringement is assessed on a
12 claim-by-claim basis. That means there may be infringement as
13 to one claim even if there is no infringement as to other
14 claims.

15 However, if you find that an independent claim on
16 which other claims depend is not infringed, there cannot be
17 infringement of any dependent claim that refers to or depends
18 on that independent claim.

19 On the other hand, if you find that an independent
20 claim has been infringed, you must still decide separately
21 whether the additional requirements of any dependent claims
22 have been satisfied.

23 That's because a dependent claim includes all the
24 requirements of any of the claims to which it refers, plus its
25 own additional requirements.

1 In order to prove direct infringement of a patent
2 claim, the Plaintiffs, PanOptis, must show by a preponderance
3 of the evidence that the accused product or process includes
4 each and every requirement or limitation of the claim, either
5 literally or under the Doctrine of Equivalents.

6 In determining whether the accused product or process
7 literally infringes one of the asserted claims in this case,
8 you must compare the accused product or process with each and
9 every one of the requirements or limitations of that claim to
10 determine whether the accused product or process contains each
11 and every limitation recited in the claim.

12 A claim requirement is present if it exists in an
13 accused product or process just as it is described in the claim
14 language, either as I have explained that language to you, or
15 if I did not explain it or construe it, as it would be
16 understood by its plain and ordinary meaning by one of ordinary
17 skill in the art.

18 If an accused product or process omits any requirement
19 recited in a claim, then you must find that the particular
20 product or process does not literally infringe that particular
21 claim.

22 If an accused product or process does not meet all the
23 requirements of a claim and thus does not literally infringe
24 the claim, there can still be direct infringement if that
25 product or process satisfies the claim under the Doctrine of

1 Equivalents.

2 Under the Doctrine of Equivalents, an accused product
3 or process infringes a claim if the accused product or process
4 performs steps or contains elements corresponding to each and
5 every requirement of the claim that are equivalent to, even
6 though not literally met by the accused product or process.

7 You may find that a step or element is equivalent to a
8 requirement of a claim that is not literally met if a person
9 having ordinary skill in the field of the technology of the
10 patent would have considered the differences between them to be
11 insubstantial or would have found that the structure performs
12 substantially the same function in substantially the same way
13 to achieve substantially the same results.

14 In order to prove that an accused product or process
15 meets a limitation by equivalents, PanOptis must prove the
16 equivalency of the claim element by a preponderance of the
17 evidence.

18 A patent can be directly infringed even if the alleged
19 infringer did not have knowledge of the patent and without the
20 infringer knowing that what it was doing infringed the claim.

21 A patent may also be directly infringed even though
22 the infringer -- the accused infringer believes in good faith
23 that what it is doing is not infringement of the patent.

24 Now, as I've explained to you previously, certain
25 claims include requirements that are means -- that are in

1 means-plus-function form.

2 A product meets a means-plus-function requirement of a
3 claim if, one, it has a structure or set of structures that
4 performs the identical function recited in the claim, and, two,
5 that structure or set of structures is either identical or
6 equivalent to one or more of the described structures that I
7 defined earlier as performing the associated function of the
8 claim term.

9 If a product does not perform the specific function
10 recited in the claim, the means-plus-function requirement is
11 not met, and the product does not directly infringe the claim.

12 Alternatively, even if the product has a structure or
13 set of structures that performs the function recited in the
14 claim but the structure or set of structures is neither
15 identical nor equivalent to the structure that I defined to you
16 as being described in the patent and performing this function,
17 then the product does not directly infringe the asserted claim.

18 In this case, PanOptis argues that Huawei has
19 infringed and further that Huawei has infringed willfully.
20 If you've decided that Huawei has infringed, you must go on and
21 address the additional issue of whether or not this
22 infringement was willful.

23 Willfulness requires you to determine whether PanOptis
24 proved it is more likely than not that the infringement by
25 Huawei was especially worthy of punishment. You may not

1 determine that the infringement was willful just because Huawei
2 knew of the asserted patents and infringed them.

3 Instead, willful infringement is reserved for only the
4 most egregious behavior, such as where the infringement is
5 malicious, deliberate, consciously wrongful, or done in bad
6 faith.

7 To determine whether Huawei acted willfully, consider
8 all the facts, and these may include but are not limited to the
9 following:

10 (1) whether or not Huawei acted consistently with the
11 standards of behavior for its industry.

12 (2) whether or not Huawei reasonably believed that it
13 did not infringe or that the patent was invalid.

14 (3) whether or not Huawei made a good faith effort to
15 avoid infringing the asserted patents -- for example, whether
16 Huawei attempted to design around the asserted patents.

17 And, (4), whether or not Huawei tried to cover up its
18 infringement.

19 None of these factors alone is determinative, and this
20 is not an exhaustive list of the things that you should
21 consider.

22 Your determination of willfulness should incorporate
23 the totality of the circumstances based on all of the evidence
24 presented during the trial.

25 If you decide that any infringement was willful, that

1 decision should not affect any damages award that you might
2 make. As I've said, the Court will take willfulness into
3 account later.

4 I'll now instruct you on the rules that you must
5 follow in deciding whether or not Huawei has proven that the
6 asserted claims of the asserted patents are invalid.

7 A United States patent is accorded a presumption of
8 validity based on the presumption that the United States Patent
9 and Trademark Office, which you've heard referred to throughout
10 the trial simply as the PTO, has acted correctly in issuing the
11 patent.

12 This presumption of validity extends to all issued
13 United States patents, including those that claim the benefit
14 of an earlier patent application, such as so-called
15 continuation or continuation-in-part applications.

16 Now, to prove that any claim of a patent is invalid,
17 Huawei, the Defendants, must persuade you by clear and
18 convincing evidence that the claim is invalid.

19 You have heard evidence of prior art that the Patent
20 Office may or may have -- may or may not have evaluated. The
21 fact that any particular reference was or was not considered by
22 the Patent Office does not change Huawei's burden of proof.
23 However, in making your decision whether Huawei has met its
24 burden of proof by clear and convincing evidence as to a
25 particular patent claim, you may take into account the fact

1 that the prior art was not considered by the Patent Office.

2 Prior art differing from the prior art considered by
3 the Patent Office may, but does not always, carry more weight
4 than the prior art that was considered by the Patent Office.

5 Again, members of the jury, the ultimate
6 responsibility for deciding whether the claims of the patent
7 are valid is up to you.

8 Keep in mind that everyone has the right to use
9 existing knowledge and principles. A patent cannot remove from
10 the public the ability to use what was known or obvious before
11 the invention was made or patent protection was sought.

12 Like infringement, invalidity is determined on a
13 claim-by-claim basis. In making your determination as to
14 invalidity, you should consider each claim separately. If one
15 claim of a patent is invalid, this does not mean that any other
16 claim is necessarily invalid.

17 Claims are construed the same way for determine --
18 determining infringement as for determining invalidity.

19 Now, in patent law, a previous device, system, method,
20 publication or patent that predates the claimed invention is
21 generally called a prior art reference. Prior art may include
22 any of the following:

23 1. Any product or system that was known or used by
24 others in the United States before the patented invention was
25 made;

1 2. Any patent that issued or any printed publication
2 that was published anywhere in the world before the patented
3 inventions were made;

4 3. Any product or system that was in public use or on
5 sale in the United States more than one year before the
6 applications for the asserted patents were filed;

7 4. Any patents that issued or any public -- any
8 printed publication that was published anywhere in the world
9 more than one year before the application of the assert -- for
10 the asserted patents were filed;

11 5. Any patent application that was filed in the
12 United States by someone other than the inventors of the
13 asserted patents before the invention was made.

14 In this case, Huawei contends that the items listed in
15 Exhibit C to these final jury instruction are prior art as to
16 the '293, the '569, and the '238 patents.

17 The priority dates for the '216, the '284, the '569,
18 the '293, and the '238 patents are as follows:

19 For the '216 patent, the priority date is December the
20 1st, 1999.

21 For the '284 patent, the priority date is December the
22 20th, 2007.

23 For the '569 patent, the priority date is June the
24 12th, 2003.

25 For the '293 patent, the priority date is June the

1 19th, 2007.

2 And for the '238 patent, the priority date is June --
3 is April the 15th, 2002.

4 A provisional patent application is a legal document
5 filed with the United States Patent and Trademark Office --
6 Office to establish an early filing date, but it does not
7 become a formal patent application unless the applicant files
8 for a patent within one year.

9 Huawei contends that certain United States patents are
10 prior art to certain of the asserted claims based on the filing
11 dates of the prior art patent's provisional applications. An
12 issued patent is given the benefit of the earlier filing date
13 of its provisional application if:

14 (1) the provisional application contains a written
15 description of the invention claimed in the issued patent in
16 such full, clear, concise, and exact terms to enable a person
17 having ordinary skill in the art to practice the invention
18 claimed in the issued patent;

19 And, (2), the subject matter relied on in the issued
20 patent is supported by the provisional application.

21 The written-description requirement is satisfied if a
22 person having ordinary skill in the art reading the provisional
23 patent application would have recognized that it describes the
24 full scope of the claimed invention as it is finally claimed in
25 the issued patent and that the inventor actually possessed that

1 full scope by the filing date of the provisional application.

2 The written description requirement may be satisfied
3 by any combination of the words, structures, figures, diagrams,
4 formulas, et cetera, contained in the provisional application.

5 The full scope of a claim or any particular
6 requirement in a claim need not be expressly disclosed in the
7 provisional application if a person having ordinary skill in
8 the field of the technology of the patent at the time of the
9 filing would have understood that the full scope or the missing
10 requirement is in the written description of the provisional
11 application.

12 It's not necessary that each and every aspect of the
13 claim in the issued patent be explicitly discussed and specific
14 examples of what is claimed are not required, as long as a
15 person having ordinary skill would understand that any aspect
16 not expressly discussed is implicit in the provisional
17 application as originally filed.

18 The enablement requirement is satisfied if the
19 provisional patent application would permit persons having
20 ordinary skill in the art to make and use the full scope of the
21 invention claimed in the issued patent at the time of the
22 provisional filing without having to conduct undue
23 experimentation. However, some amount of experimentation to
24 make and use the invention is allowable.

25 Now, Huawei contends that certain prior art references

1 listed above qualify as printed publications before the
2 priority dates of the asserted patents.

3 A printed publication must have been maintained in
4 some tangible form, such as printed pages, typewritten pages,
5 Internet publication or photocopies, and must have been
6 sufficiently accessible to persons interested in the subject
7 matter of its contents.

8 Information is publicly accessible if it was
9 distributed or otherwise made available to the extent that
10 persons interested and ordinarily skilled in the subject matter
11 exercising reasonable diligence can locate it. It's not
12 necessary for the printed publication to have been available to
13 every member of the public.

14 An issued patent is a printed publication. A
15 published patent application is a printed publication as of its
16 publication date.

17 Huawei contends that all of the patents-in-suit are
18 invalid as being obvious. Even though an invention may not
19 have been identically disclosed or described before it was made
20 by an inventor in order to be patentable, the invention also
21 must not have been obvious to a person of ordinary skill in the
22 field of technology of the patent at the -- at the time the
23 invention was made or before the filing date of the patent.

24 Huawei, the Defendants, are required to establish that
25 a patent claim is invalid by showing by clear and convincing

1 evidence that the claimed invention would -- would have been
2 obvious to persons having ordinary skill in the art at the time
3 the invention was made or the patent was filed in the field of
4 the invention.

5 In determining whether a claimed invention is obvious,
6 you must consider the level of ordinary skill in the field of
7 the invention that someone would have had at the time the
8 invention was made or the patent was filed, the scope and
9 content of the prior art, and any differences between the prior
10 art and the claimed invention.

11 Keep in mind, ladies of the jury, that the existence
12 of each and every element of the claimed invention in the prior
13 art does not necessarily prove obviousness. Most, if not all,
14 inventions rely on the building blocks of prior art.

15 In considering whether a claimed invention is obvious,
16 you may, but you are not required to find obviousness, if you
17 find that at the time of the claimed invention or the patent's
18 filing date there was a reason that would have prompted a
19 person having ordinary skill in the field of the invention to
20 combine the known elements in a way the claimed invention does,
21 taking into account such factors as:

22 (1) whether the claimed invention was merely the
23 predictable result of using prior art elements according to
24 their known functions.

25 (2) whether the claimed invention provides an obvious

1 solution to a known problem in the relevant field.

2 (3) whether the prior art teaches or suggests the
3 desirability of combining elements claimed in the invention.

4 (4) whether the prior art teaches away from combining
5 elements in the claimed invention.

6 And, (5), whether the -- whether the change resulted
7 more from design incentives or other market forces.

8 To find that it rendered the invention obvious, you
9 must find that the prior art provided a reasonable expectation
10 of success.

11 In determining whether the claimed invention was
12 obvious, consider each claim separately. Do not use hindsight.
13 In other words, you should not consider what a person of
14 ordinary skill in the art would know now or what has been
15 learned from the teachings of the asserted patents.

16 In making these assessments, you should take into
17 account any objective evidence, sometimes called secondary
18 considerations, that may shed light on the obviousness or not
19 of the claimed invention, such as:

20 (1) whether the claimed invention was commercially
21 successful as a result of the merits of the claimed invention,
22 rather than as the result of design need or market-pressure
23 advertising or similar activities.

24 (2) whether the invention satisfied a long-felt need.

25 (3) whether others had tried and failed to make the

1 invention.

2 (4) whether others invented the invention at roughly
3 the same time.

4 (5) whether others copied the invention.

5 (6) whether there were changes or related technologies
6 or market needs contemporaneous with the invention.

7 (7) whether the inventor achieved unexpected results.

8 (8) whether others in the field praised the invention.

9 (9) whether persons having ordinary skill in the art
10 of the invention expressed surprise or disbelief regarding the
11 invention.

12 (10) whether others sought or obtained rights to the
13 patent from the patentholder.

14 And, (11), whether the inventor proceeded contrary to
15 accepted wisdom in the field.

16 No one of these factors alone is dispositive, and you
17 must consider the obviousness or non-obviousness of the
18 invention as a whole. These factors are relevant only if there
19 is a connection or nexus between the factor and the asserted
20 claims of the asserted patents.

21 Even if you conclude that some of the above indicators
22 have been established, those factors should be considered along
23 with all the other evidence in the case in determining whether
24 Huawei has proven that the claimed invention would have been
25 obvious.

1 Several times in my instructions, I've referred to a
2 person of ordinary skill in the art or in the field of the
3 invention. It's up to you, ladies of the jury, to decide the
4 level of ordinary skill in the field of the invention.

5 In deciding what the level of ordinary skill in the
6 field of the invention is, you should consider all the evidence
7 introduced during the trial, including but not limited to the
8 following:

9 (1) the levels of education and experience of the
10 inventor and other persons actively working in the field.

11 (2) the types of problems encountered in the field.

12 (3) prior art solutions to those problems.

13 (4) rapidity with which innovations are made.

14 And, (5), the sophistication of the technology.

15 If you find that Huawei has infringed any valid claim
16 of PanOptis's asserted patents, then you must consider what
17 amount of damages to award PanOptis.

18 I'll now instruct you about the measure of damages,
19 but by instructing you on damages, I am not suggesting which
20 party should win this case on any issue.

21 The damages that you award must be adequate to
22 compensate PanOptis for any infringement you may find.
23 However, you must not award PanOptis more damages than are
24 adequate to compensate it for the infringement, nor should you
25 include any additional amount for the purpose of punishing

1 Huawei or setting an example.

2 PanOptis has the burden to establish its damages by a
3 preponderance of the evidence. PanOptis is not entitled to
4 damages that are remote or speculative.

5 PanOptis seeks damages in the form of a reasonable
6 royalty. A reasonable royalty is defined as the amount of
7 money PanOptis and Huawei would have agreed on as a fee for
8 Huawei's use of PanOptis's inventions at the time the
9 infringement began.

10 The determination of a damages award, however, is not
11 an exact science, and the amount need not be proven with
12 unerring precision. You may approximate, if necessary, the
13 amount to which PanOptis is entitled.

14 Now, while damages may not be determined by mere
15 speculation or guess, it may be proper to award a damages
16 amount if the evidence shows the extent of the damages as a
17 matter of just and reasonable inference.

18 I'll give you more detailed instructions regarding
19 damages shortly. However, note that PanOptis is entitled to
20 recover no less than a reasonable royalty for each infringing
21 sale or use of its patented technology.

22 A royalty is a payment made to a patentholder in
23 exchange for the right to make, use, or sell the claimed
24 invention.

25 A reasonable royalty is the amount of royalty payment

1 that a patentholder and the alleged infringer would have agreed
2 to in a hypothetical negotiation taking place at a time prior
3 to when the infringement first began.

4 In considering this hypothetical negotiation, you
5 should focus on what the expectations of the patentholder and
6 the alleged infringer would have been had they entered into an
7 agreement at that time and had -- and had they acted reasonably
8 in their negotiations.

9 In determining this, you must assume that both parties
10 believe the patent -- or in this case, the patents were valid
11 and infringed and that both parties were willing to enter into
12 an agreement.

13 The reasonable royalty you determine must be a royalty
14 that would have resulted from the hypothetical negotiation and
15 not simply a royalty that either party would have preferred.

16 Evidence of things that happened after the
17 infringement first began can be considered in evaluating the
18 reasonable royalty only to the extent that the evidence aids in
19 assessing what royalty would have resulted from a hypothetical
20 negotiation.

21 Your determination does not depend on the actual
22 willingness of the parties to the lawsuit to engage in such
23 negotiations.

24 Your focus, as part of this hypothetical negotiation,
25 should be on what the parties' expectations would have been had

1 they willingly entered into negotiations for royalties at the
2 time of first infringement.

3 Where the parties dispute a matter concerning damages
4 for infringement, it is PanOptis's burden to prove that it is
5 more probable than not that PanOptis's version is correct.

6 PanOptis must prove the amount of its damages with
7 reasonable certainty but need not prove the amount of damages
8 with mathematical precision. But, again, PanOptis is not
9 entitled to damages that are remote or speculative.

10 If you find that any of the asserted patents are both
11 infringed and not invalid, you must award damages to compensate
12 for any such infringement.

13 A reasonable royalty must reflect that the '216, the
14 '569, the '293, and the '284 patents have been declared to be
15 essential to the cellular standards of the European
16 Telecommunications Standards Institute, sometimes called ETSI,
17 E-T-S-I.

18 Further, PanOptis committed to license the '216, the
19 '569, the '293, and the '284 patents on fair, reasonable, and
20 non-discriminatory, often called FRAND, F-R-A-N-D, terms.

21 Both this FRAND commitment, I'll refer to at times in
22 my instructions to standard essential patents -- because of
23 this FRAND commitment, I'll refer in my instructions at times
24 to standard essential patents. By referring to standard
25 essential patents, the Court is not instructing you that the

1 asserted patents are actually essential to any standard.
2 Again, it's up to you, the jury, to decide whether or not
3 PanOptis has proven that the patents are standard essential and
4 infringed.

5 Ericsson and Panasonic -- Panasonic, PanOptis's
6 predecessors in interest with respect to the asserted
7 patents -- submitted written commitments to ETSI covering the
8 '216, the '569, the '293 patent, and the '284 patent in which
9 they agreed to grant irrevocable licenses on fair, reasonable,
10 and non-discriminatory, or FRAND, terms and conditions.

11 Because Ericsson and Panasonic -- Panasonic are
12 predecessors in interest to PanOptis, PanOptis has the same
13 FRAND obligations as Ericsson and Panasonic had when they
14 submitted their written commitments to ETSI.

15 You must make sure that any reasonable royalty
16 determination takes into account PanOptis's FRAND obligations
17 as the Court has just explained them to you. A reasonable
18 royalty in this case for the '216, '569, '293, and '284 patents
19 cannot exceed the amount permitted under PanOptis's FRAND
20 obligations.

21 In determining what amount is a FRAND royalty, you may
22 consider any evidence of patent hold-up and royalty stacking.

23 The '238 patent has not been declared essential to any
24 cellular standard, and, therefore, a reasonable royalty
25 determination regarding the '238 patent need not take into

1 account any FRAND obligations.

2 I'll provide you with additional instructions on how a
3 FRAND commitment for the asserted patent affects your
4 determination of reasonable royalty.

5 In determining the reasonable royalty, you should
6 consider all the facts known and available to the parties at
7 the time the infringement began. Some of the kinds of factors
8 that you may consider in making your determination are as
9 follows:

10 1. The royalties received by the patentee for
11 licensing of the patents-in-suit proving or tending to prove an
12 established royalty.

13 2. The rates paid by a licensee for the use of other
14 patents comparable to the patents-in-suit.

15 3. The nature and scope of the license as exclusive
16 or non-exclusive or as restricted or non-restricted in terms of
17 territory or with respect to the parties to whom the
18 manufacture -- manufactured products may be sold.

19 4. Whether being able to use the patented invention
20 helps in making sales of other products or services;

21 5. The duration of the patent and the term of the
22 license.

23 6. The extent to which the infringer has made use of
24 the invention and any evidence probative of the value of that
25 use.

1 7. The portion of the profit or of the selling price
2 that may be customary in the particular business or in
3 comparable businesses to allow for the use of the invention or
4 analogous inventions.

5 8. The portion of the realizable profits that should
6 be credited to the invention as distinguished from non-patented
7 elements, the manufacturing process, business risks, or
8 significant features or improvements added by the infringer.

9 9. The opinion and testimony of qualified experts.

10 10. The amount that a licensor, such as the patentee,
11 and a licensee, such as the infringer, would have agreed upon
12 at the time the infringement began if both sides had been
13 reasonably and voluntarily trying to reach an agreement.

14 Now, no one of these factors is dispositive, and you
15 can and should consider evidence that has been presented to you
16 in this case on each of these factors.

17 You may also consider any other factors that in your
18 minds would have increased or decreased the royalty the alleged
19 infringer would have been willing to pay and the patentholder
20 would have been willing to accept acting as normally prudent
21 business people.

22 When determining a reasonable royalty, you may
23 consider evidence concerning the amounts that other parties
24 have paid for rights to the '216, '569, '293, '284, or '238
25 patents or for rights to similar technologies.

1 A license agreement need not be perfectly comparable
2 to a hypothetical license that would have been negotiate --
3 negotiated between PanOptis and Huawei in order for you to
4 consider it.

5 However, if you choose to rely upon evidence from any
6 license agreements, you must account for any differences
7 between those licenses and the hypothetically negotiated
8 license between PanOptis and Huawei when you make your
9 determination of reason -- of a reasonable royalty, including
10 the types of technology licensed, whether the license contained
11 a cross-license and/or similar patent protections, whether the
12 license contained any value related to a release of liability,
13 the date when the license was entered, the financial or
14 economic conditions of the parties at the time the parties
15 entered into a license, the extent of use, if any, of any
16 particular licensed patents, the number of patents involved in
17 the license, whether or not the license covered foreign
18 intellectual property rights, the extent to which litigation
19 may have affected the license, and whether contrary to the
20 hypothetical negotiation, the licensee in the real-world
21 license at the time of entering the license believed that the
22 patents were either not infringed or were invalid.

23 This difference should also account for the assumption
24 of the parties during the hypothetical negotiation that the
25 patents covered by the hypothetical license were valid and

1 infringed, assumptions that may not have existed when other
2 comparable license were -- licenses were agreed upon.

3 Damages for patent infringement must be apportioned to
4 reflect the value the invention contributes to the accused
5 products or features and must not include value from the
6 accused products or features that is not attributable to the
7 patent.

8 For the '216, '569, '293, and '284 patents, which have
9 a FRAND obligation to ETSI as part of the LTE standards, you
10 must consider the following two factors:

11 (1) any royalty for the patented technology must be
12 apportioned from the value of the standard as a whole; and.

13 (2) the FRAND royalty rate must be based on the
14 incremental value that the patented technology adds to the
15 product, not any value added by the standardization of that
16 technology.

17 In considering the evidence of a reasonable royalty,
18 you are not required to accept one specific figure or another
19 for the reasonable royalty. You are entitled to determine what
20 you consider to be a reasonable royalty based on your
21 consideration of all the evidence presented by the parties,
22 whether that evidence is of a specific figure or a range of
23 figures.

24 A reasonable royalty can take the form of a run --
25 running royalty or a fully paid-up, lump-sum royalty.

1 A running royalty is a fee that is paid for the right
2 to use the patent that is paid for each unit or infringing
3 product sold.

4 A paid-up lump-sum is when the infringer pays a single
5 price for a license covering both past and future infringing
6 sales.

7 If you find PanOptis is entitled to damages, you must
8 decide whether the parties would have agreed to a running
9 royalty or a fully paid-up lump-sum royalty at the time of the
10 hypothetical negotiation.

11 Now, with these instructions, ladies of the jury,
12 we're ready to hear closing arguments for the attorneys in this
13 case.

14 We'll now hear the first closing argument from the
15 Plaintiffs.

16 Mr. Burgess, you may present the Plaintiffs' first
17 closing argument.

18 MR. BURGESS: Thank you, Your Honor.

19 THE COURT: You may proceed.

20 MR. BURGESS: Thank you, Your Honor.

21 Members of the jury, when this case started, you heard
22 that it was a trespass case. It turns out, it's a case of very
23 determined willful trespass.

24 PanOptis has been negotiating with Huawei for years,
25 but Huawei just won't pay fair value for PanOptis's patents,

1 even though its 4G competitors have paid over a hundred million
2 dollars in aggregate license fees for PanOptis's patents.

3 You see, Huawei is the odd man out, and it is bound
4 and determined to keep it that way. Huawei thinks that if it
5 just keeps making low-ball offers, it can continue to string
6 PanOptis along and never have to pay fair value.

7 But you can change that today.

8 We're here right now because Huawei left PanOptis no
9 choice but to file this lawsuit to protect its intellectual
10 property. And it's up to you to decide if they had any defense
11 worth bringing.

12 Here's what we know so far. Huawei could not muster
13 infringement defenses on two of the five patents. They
14 couldn't muster invalidity defenses on another two of the
15 patents.

16 Their damages model assumes that all of the patents
17 are worth the same thing, and we saw yesterday that they have a
18 couple of experts who seemed to have copied from one another.

19 Huawei should have voluntarily resolved this case long
20 ago by taking a license that was fair, reasonable, and
21 non-discriminatory. But they didn't. And it's now up to you
22 to finally hold them accountable for their continued patent
23 infringement.

24 Huawei's admitted during this trial that it uses the
25 LTE standard. Despite this, Huawei refuses to pay for the

1 technology it uses.

2 To avoid -- to avoid paying a reasonable royalty in
3 this case, Huawei argues that the patents are obvious, or if
4 they're not obvious, they're only worth \$125,000.00, which by
5 the way, is less than half what Huawei paid their expert to
6 write his reports in this case.

7 In a little while, you're going to go back to the jury
8 room to decide whether we've proven by a preponderance of the
9 evidence that Huawei infringes PanOptis's patents. And even
10 though we only need to tip the scales just very slightly, I
11 think you're going to find that the evidence of Huawei's
12 infringement is clear and unmistakable.

13 We've shown you that PanOptis's four radio patents are
14 essential to the LTE standard. And Huawei admits its phones
15 use that standard. That's patent infringement.

16 PanOptis's one video patent is similar. Huawei admits
17 that its products use the H.264 video standard. And that takes
18 care of most of the limitations of this big long claim we went
19 through. And the few that are left over that relate to sound,
20 Huawei doesn't contest that they implement those.

21 That's patent infringement.

22 Now, during our opening statement, we told you that we
23 were going to go through every one of these claims and show you
24 that every one of the words was satisfied in Huawei's products.
25 And we did that. It took a lot of time, but we did it, and we

1 discharged our burden.

2 And now after checking all these boxes, it couldn't be
3 clearer that Huawei infringes. In fact, Huawei didn't even
4 argue that it doesn't infringe the '293 or '569 patents. And
5 Huawei's arguments on the other three patents are unconvincing,
6 and I'm going to remind you why.

7 Starting with the video patent, the '238. After
8 Dr. Madisetti had explained how Huawei's products satisfy each
9 of the 12 limitations of the '238 patent, Huawei's only quibble
10 was that the one unique value has to denote the number of
11 non-zero coefficients and only the number of non-zero
12 coefficients.

13 But you can see for yourself that's not what the Court
14 said. Remember how Dr. Madisetti very carefully linked each
15 part of the Court's construction to the table from the H.264.
16 And Huawei's own expert, you heard him say, that if you agree
17 with Dr. Madisetti that a pair like 2,2 is a unique value, then
18 you should find infringement. And this same expert admits that
19 every pair like 2,2 in this table is unique, just like latitude
20 and longitude.

21 Let's move to the '216 patent.

22 Now, you've heard a lot about something called the
23 channel interleaver, the so-called second shuffler, and how it
24 supposedly avoids infringing the '216 patent. But that's just
25 a smoke screen. Of course, there's a channel interleaver. But

1 it doesn't matter because the claim only requires the bits to
2 be in order until they reach the modulator.

3 The claim doesn't care one way or another about
4 whether there's a channel interleaver inside the modulator.
5 You can check the claim for yourself. Nothing in the
6 modulating circuit element prohibits interleaving.

7 And that's why Dr. Bims fought so hard to keep from
8 saying that the channel interleaver is inside the modulator.
9 But remember what his report says about the channel
10 interleaver? It interleaves at the modulation symbol level.

11 Even though we're not exactly sure who wrote this part
12 of his report, it couldn't be slanted enough to hide the fact
13 that the channel interleaver is inside the modulation circuit.

14 And Huawei's arguments on the '284 patent fare no
15 better. After Dr. Womack showed that the '284 patent is in the
16 LTE standard and infringed by Huawei, Dr. Bims came back and
17 said, no, that's wrong.

18 You heard Dr. Bims argue that there's no infringement
19 because of the 0s that are highlighted in green here in the RV
20 column of the LTE table on the right. That's another smoke
21 screen.

22 Look at how the LTE -- LTE table on the right lines up
23 with the table from the patent, Table 3 on the left. The RV
24 columns in the two table -- two tables are nearly identical.
25 And that's it, that covers infringement for all the patents.

1 Question 1 in your verdict form will look like this.
2 If you think we've carried our burden of proving infringement,
3 then this is how you should answer the questions.

4 Mr. Stevenson's going to talk to you about Question 2
5 in a few minutes, and what he's going to tell you is that not
6 only does Huawei infringe, but they infringe willfully.

7 Question 3 is to do with Huawei's invalidity claims.

8 First of all, Huawei didn't even argue to you that the
9 '216 and '284 patents are invalid. But for the other three,
10 Huawei says they're obvious. They're invalid because they're
11 obvious. They ask you to go back in time with perfect 20/20
12 hindsight, understanding how the inventions work, and conclude
13 that the -- PanOptis's inventions were obvious.

14 But I want you to remember one thing. Huawei didn't
15 show you one single piece of prior art that satisfied all the
16 limitations of any of the asserted claims.

17 Huawei's evidence falls far short of the clear and
18 convincing evidence threshold, particularly considering their
19 expert's failure to adequately address PanOptis's secondary
20 considerations of non -- non-obviousness.

21 And you may -- you may remember yesterday, the page
22 after page after page after page of yellow. Well,
23 that was all to do with secondary considers of non-obviousness.

24 And there's a lot to consider. Remember, Huawei
25 offered to buy the '238 patent, offered to license the other

1 patents multiple times. And even though Huawei's offers were
2 far too low, they clearly wanted these patents. After all,
3 would you will offer to license or buy a patent that you
4 thought was invalid or that you weren't using?

5 Let's start with Huawei's invalidity defense on the
6 video patent they tried to buy, the '238 patent.

7 Huawei's expert on this pat -- patent, Dr. Schonfeld,
8 used this figure, Figure 2 from the Bjontegaard '387 patent
9 when he was analyzing it for you. And he used it for a number
10 of the claim limitations in order to conclude incorrectly that
11 the claim is obvious.

12 But what he didn't tell you, and what he had to admit
13 on cross-examination, was that Figure 2 wasn't added until
14 after the priority date of the '238 patent, which means
15 Figure 2 is simply too late to be used to invalidate PanOptis's
16 patent.

17 Specifically, what you were told is that Figure 2
18 didn't appear on this timeline until all the way on the right,
19 on August 30th, 2002, which is well after the priority date and
20 April 15th, 2002 of the '238 patent.

21 Now, Huawei tries to get around this very clear
22 problem by suggesting that Figure 2 should get the same date as
23 the provisional, even though it wasn't in it.

24 You heard Dr. Schonfeld say the words in the
25 provisional are the same as Figure 2. They're the same. But

1 you know that's not true. If that were true, Huawei wouldn't
2 have shown you the figure, they would have just shown you the
3 words. But that's not what they did.

4 Turning to the '293 patent, Huawei says it would have
5 been obvious to combine the Lohr patent with a 3G, or third
6 generation, so the last generation of cell phone technology
7 system. But the inventors of the Lohr patent clearly were
8 experts on their own system, and we know from looking at the
9 very beginning of the patent that they knew all about 3G
10 technology.

11 And, yet, they didn't disclose the invention of the
12 '293 patent. It wasn't obvious to them. And you shouldn't
13 find it would have been obvious to anybody else.

14 You remember yesterday when Dr. Wells tried to explain
15 that the '569 patent is obvious, but he couldn't explain it
16 using the plain and ordinary meaning of simple words in the
17 claim like "groups."

18 And you may recall the Court's -- Court's instruction
19 yesterday while Dr. Wells was testifying. There were no
20 special definitions of the claim language in the '569 patent,
21 and you should give the terms their plain and ordinary
22 meanings.

23 And I think you know that the plain and ordinary
24 meaning of "groups" is not code blocks, as Dr. Wells tried to
25 convince you. But I suspect Huawei's lawyer may come up here

1 and talk to you about figures in the '569 patent. But if he
2 does that, please remember that all that matters are the words
3 of the claims, not Huawei's strained interpretations of figures
4 in the patent.

5 You may also remember that Dr. Wells showed you the
6 figure from the Wallace patent. That was their main -- their
7 main invalidity reference, and this is -- these were two
8 figures that he put in his expert -- expert report, it's --
9 it's the figure from the Wallace patent side-by-side. And it
10 was clear from Dr. Wells -- Dr. Wells's testimony that he
11 thought that just coloring the two sides of the figures
12 different colors made them different.

13 But, of course, that's not true, and that couldn't be
14 more clear than in these two figures from Dr. Wells's expert
15 report, which show that the two sides of the figures are the
16 same regardless of the colors that Dr. Wells uses.

17 And that's it for Huawei's invalidity defenses.

18 Question 3 in your verdict form will look like this:
19 If you agree that Huawei failed to prove by clear and
20 convincing evidence that these patents are invalid, we ask you
21 to put a "no" on each of these lines.

22 Question 4 is about damages. And we're here today to
23 ask you to award a reasonable royalty for Huawei's use of
24 PanOptis's intellectual property. Huawei owed -- Huawei owes
25 rent, and we're asking you to set the price.

1 Now, you heard from our experts, and they told you
2 that they calculated damages based on the actual technical --
3 technical benefit of the patents. They analyzed non-infringing
4 alternatives, they ran simulations, they compiled data, and
5 they carefully determined the actual benefits in terms of
6 quantifiable bandwidth savings.

7 THE COURT: 15 minutes have been used.

8 MR. BURGESS: Thank you, Your Honor.

9 For four of the five patents, Huawei's experts ran no
10 simulations at all. And, of course, they didn't need to
11 because Huawei just assumed that all the patents are worth the
12 same thing. No need for simulations to conclude that.

13 But the jury instructions you just heard told you that
14 you should -- you should consider the value that the invention
15 contributes to the accused products. And that's just what our
16 experts measured. All Huawei could do was quibble with their
17 models. They couldn't be bothered to run their own.

18 And when they did run their own, they got the exact
19 same result as PanOptis. For the '238 patent, Huawei asked --
20 asked you to reject Dr. Madisetti's model even though their
21 expert tested the model and got just the same results.

22 Instead, Huawei wants you to believe that the benefits
23 of the video coding patent are minuscule, amounting to .13
24 percent compression or 13 -- 13 pennies on a hundred dollar
25 bill.

1 And that's even though Dr. Bjontegaard described the
2 benefits of related technology as having significant bit rate
3 savings.

4 And the savings of the '238 patent are significant, as
5 Dr. Madisetti shows, and that should be unsurprising. After
6 all, Huawei itself wanted to buy this patent.

7 The expert test -- the experts testified to the
8 substantial benefits of the inventions, and we ask you to award
9 damages consistent with the innovations included in the
10 patents.

11 This is the last time that I'll be able to talk to
12 you, and on behalf of myself, my client, PanOptis, and our
13 entire team, and I'm sure Huawei, I just want to express my
14 sincere thanks for your patience, and it was a pleasure to
15 present our case to you.

16 THE COURT: Defendants may now present their closing
17 argument to the jury.

18 You may proceed, Mr. Haslam.

19 MR. HASLAM: I'm going to start not where I intended
20 to start, but I want you to remember what the Judge said about
21 attorney argument on the one hand and evidence on the other.

22 What you just heard was attorney argument, and as I go
23 through my presentation, I'm going to show you that some of the
24 things you just heard are just plain wrong. And some of them
25 are wrong based on the jury instructions that you're going to

1 receive.

2 But before I do that, on behalf of myself, my client,
3 Huawei, and my -- all of my colleagues who are the brains and
4 horsepower behind the presentation, I'm just the tip of the
5 sword here, some would say I'm the dull tip of the sword, I
6 want to thank you for giving a week of your lives to help us
7 solve this dispute.

8 As Judge Gilstrap said, you are one of the pillars of
9 our democracy. The job you play as the sole triers of fact is
10 what makes our system as great as it is, that you who take time
11 out of your lives will sit there impartially and fairly listen
12 to the evidence on things that may affect your lives, the
13 details of which you probably never needed to know this much
14 about. So thank you.

15 You received basically almost an undergraduate course
16 in wireless communications and LTE this week, and I'm going to
17 go through and just give you a brief review of some of what I
18 think the highlights are, just like Dr. Burgess did, that I
19 think are going to lead you in the opposite direction of what
20 he said.

21 But before I do that, before I get to the technology,
22 I want to start with what I started with on Monday. This is a
23 case about five patents. We got here because this is also a
24 case about a failed negotiation.

25 Both Huawei and PanOptis are -- bargained hard over

1 the past few years trying to resolve this dispute, and they
2 didn't, and that's why we're here.

3 But bargaining hard by both sides doesn't mean each
4 side was unreasonable. But when there's a failed negotiation
5 after hard bargaining, it is often the case that each side
6 says, oh, I was reasonable, but they weren't.

7 And I think that's what you have here with PanOptis
8 trying to tell you that Huawei didn't negotiate in good faith,
9 that Huawei was giving low-ball offers.

10 \$35 million in this technology for these patents is
11 not chicken feed. But PanOptis tells you that's an insult. I
12 don't think it is.

13 And remember how they tried to get you to think that
14 the \$35 million was really \$700.00? You saw their lawyer use
15 this easel and put up his math about trying to break the \$35
16 million down into what he came up with, I think, as \$733.00.
17 And he started with 6,000 patents, even though Mr. Zhang said
18 that's not what this negotiation was about, it was about
19 standard essential patents. And they went through that math
20 anyway and came up with \$733.00.

21 But what did you hear yesterday? They criticized
22 Huawei for saying that it was 1,800 standard essential patents.
23 They said that was too high, and that the Court in England said
24 it was like 800. And I think they even suggested that it might
25 be as low as 300.

1 Well, you get a lot different math if you take \$35
2 million and you divide it by anything realistic about what the
3 declared essential patents are.

4 And I want to remind you, we're not here talking about
5 6,000 patents. We're not talking about that nice map they had
6 with patents and dollar signs all over the world. The reason
7 they keep trying to do that is they're trying to say, well,
8 Huawei uses the LTE standard, and they don't have licenses with
9 everyone. Well, you heard why there might be reasons why they
10 don't. They buy chips from Qualcomm. They buy chips from
11 Texas Instruments. You think -- and with those come licenses.

12 And LG and Apple and Samsung and all those other cell
13 phone manufacturers are in the same business, and they have
14 their standard essential patents. And it's not unusual for
15 parties to decide let's just let sleeping dogs lie.

16 And in any event, all those other patents doesn't make
17 a difference. On this verdict form, there's five patents, and
18 that's what we're here to deal with.

19 Now, this trial reminded me of something a legal
20 scholar once wrote, and I'm just going to read it because I
21 didn't memorize it.

22 Cross-examination is a useful tool in the advocate's
23 toolkit, but it's like any other tool. A hammer can be used to
24 perform a useful task of driving nails or used to perform the
25 wrongful task of bashing in someone's skull. Cross-examination

1 can perform the useful task of disclosing truth or used for the
2 tasks of obscuring truth and even promoting falsehood.

3 I think a lot of what PanOptis did this week in its
4 cross-examinations falls more into the latter categories than
5 the former.

6 I take as an example the cross-examination of the
7 experts on the virtual identity of parts of their report
8 dealing with secondary considerations. That was a painful and
9 embarrassing cross-examination for me to sit through.

10 As Dr. Burgess established, there are legal doctrines
11 that the experts have to render their opinions in, and it is
12 not unusual that you will see in the experts' reports similar
13 or the same language describing the legal standards that they
14 get because the law they all have to apply is the same.

15 Secondary considerations is also a set of opinions
16 that experts give with a legal construct. And the legal
17 construct is the same for all secondary considerations. But
18 that's no excuse for effectively cutting and pasting those
19 portions of standard -- of the -- in their reports.

20 You should, as the Judge said, consider that and give
21 it the weight that you think you should give. And all I would
22 ask you to do is to consider that and also consider the
23 demeanor and how our experts, Dr. Bims and Dr. Wells, responded
24 to the questions.

25 Now, one final thing, and then I'm going to get to the

1 patents. You heard attorney argument on the -- all the
2 validity issues here. Ask yourself this. Why didn't they
3 bring their experts back, Dr. Madisetti, to talk about the
4 Bjontegaard patent? Why didn't they bring their other experts
5 back to talk about the '569 and the '293? They had an
6 opportunity to do so.

7 You remember yesterday, we took a break in the middle
8 of the afternoon after we rested our case, and Judge Gilstrap
9 told you when you come back, the Plaintiffs are going to put on
10 their rebuttal case. And I -- I was surprised and you were
11 probably pleasantly surprised when you came back in and the
12 Judge said, they're not going to put on a rebuttal case.

13 They had every right to do so. They had the time to
14 do so. And the night before they told us they were going to do
15 so. They probably didn't bring their experts back because I
16 don't think they could have helped their case, and probably
17 because we could have shown you the same kinds of similarities
18 in their reports -- across their reports on topics which are
19 based on legal doctrines.

20 And you should take that into account when you weigh
21 the attorney argument you heard from Dr. Burgess and the fact
22 that Dr. Madisetti didn't come back and tell you what was wrong
23 with the patent -- the '387 patent and the Bjontegaard
24 provisional.

25 We've got attorney argument. I'm going to point to

1 the jury instructions that deal with the issue of whether that
2 Bjontegaard patent is treated legally as if it was filed on the
3 date of the provisional. And I'm going to show you, and he
4 showed you, but he didn't point you to the jury instructions.
5 I'm going to show you that testimony, and I'm going to show you
6 how that testimony relates to the jury instructions you will
7 have to use to determine whether the patent, in fact, is
8 entitled to the provisional date.

9 So with that, let me get to the five patents.

10 And I'm going to start with the '284 patent. I've
11 shown here the table that you saw during the trial from the
12 standard that is the central part of this. And I want you just
13 to remember that the standard requires the mobile phone to
14 determine the redundancy version to use in the physical uplink
15 shared channel.

16 Now, at the beginning of the week, I put up a board
17 and said I was going to prove non-infringement and invalidity
18 of the '216 patent. After I heard the testimony of Dr. Womack,
19 though, I did not feel the need to take the time or your time
20 to put on a validity defense.

21 So if we put that board up, I'd put a big red X by the
22 fact that I didn't show you any invalidity.

23 But here's why, remember, the claim says that there is
24 a first subset reserved for transport format and a second
25 subset reserved for redundancy version. And "reserved" has its

1 plain and ordinary meaning.

2 When you call a restaurant and make a reservation or
3 call a hotel and make a reservation for a room, do you get
4 there and expect to have someone else sitting at your table or
5 sleeping in the beds in your room? No, that's not the plain
6 and ordinary meaning of "reserved for."

7 And Dr. Womack agreed with us. This is why I didn't
8 put on a validity case: If something explicitly signals both
9 transport format and redundancy version, it was your opinion
10 that would not be covered by the claims of the '284 patent,
11 correct?

12 Yes.

13 And that would be because there would be values for
14 both transport format and redundancy version, correct?

15 Yes.

16 And you heard the testimony of Dr. Bims as he walked
17 through the source code to confirm what the standard says, that
18 Huawei phones, like every other LTE phone, uses the explicitly
19 signals values for transport format and redundancy version when
20 it uses the table.

21 Now, I don't know what they're going to put up after
22 me because I can't get up and respond to it. But one of the
23 things -- one of the smoke and mirrors I think they tried
24 during the trial, and -- and Mr. Stevenson may get up and do it
25 here, but they put this slide up and said, well, it's okay if

1 it's explicitly signalled and implicitly signalled. And that's
2 at the '284 patent, 15 -- Column 15, Lines 31 to 38.

3 But I read him the Court's construction which said if
4 it's implicitly signalled, there is no need to explicitly
5 signal it.

6 And Dr. Womack admitted that if it's explicitly
7 signalled, then it is. Doesn't meet the claims.

8 Now, I'm going to go to the '284 patent -- I'm sorry,
9 the '216 patent.

10 This is the one that's all about the shuffling or the
11 double shuffling.

12 When I asked Dr. Madisetti if he agreed with what the
13 claim language said, what did he say? He wouldn't agree that
14 the claim requires the reordered mother code word bits to be
15 forwarded -- to be modulated and forwarded to a receiver in the
16 same order in which they were reordered.

17 I didn't read that into the claim. It's right there
18 in plain -- plain English.

19 And why -- why did he fight that? I put up here from
20 PX-67, Page 21, Figures 5 -- Figure 5.2.2-1, the e's, remember,
21 in blue here is what Dr. Madisetti said is the subsequence of
22 reordered mother code words.

23 And, yes, you've heard a lot about the channel
24 interleaver. And this diagram shows that the channel
25 interleaver outputs something called h's.

1 And at PX-67, at Page 34, you see the description of a
2 channel interleaver. The output bit sequence from the channel
3 interleaver is derived as follows: The output of the block
4 interleaver is the bit sequence read out from the columns. The
5 bits are channel interleaving are denoted by the h's.

6 So they're still in bit form.

7 And what was the argument you heard from Dr. Burgess,
8 oh, well, Dr. Madisetti said, well, this -- forget this, this
9 is in the modulation.

10 And he pointed to Dr. Bims's report, and you heard
11 Dr. Bims explain what he was referring to, that the symbols --
12 that -- that the bits in the channel interleaver are arranged
13 in groups, and the groups are what they will ultimately be
14 modulated in, either by groups of two, four, or something else.

15 And -- and when you take into -- when you try to
16 evaluate whether Dr. Burgess, what he told you was correct or
17 not, remember this testimony from Dr. Madisetti. This was on
18 direct.

19 Yes, in Paragraph 71 of my report, I stated that
20 modulation is a process. It's a process by in which groups of
21 bits of information are converted to symbols.

22 That's what modulation is. And what comes out of a
23 channel interleaver is still bits.

24 And I put here in a different standard, the one that's
25 entitled modulation, 36.211, and it's Exhibit PX-61, at

1 Sections 5.3.2 and 7.1. After scrambling you get to the
2 modulation mapper. The block of scrambled bits shall be
3 modulated.

4 And it says as in 7.1 -- and 7.1 says the modulation
5 mapper takes binary bits, 0 or 1, as input and produces
6 complex-valued modulation symbols.

7 So the channel interleaver is not part of the
8 modulation circuit. Even Dr. Madisetti knows that's not right
9 because it happens in an entirely different document and in an
10 entirely different portion of the technology in the phone.

11 Now, I'm going to go to -- now, I'm going to go to the
12 '238 patent, the Bjontegaard patent.

13 Let's look at what Dr. Madisetti said about this.

14 How many times are non-zero coefficients talked about?
15 I asked him if he'd be surprised over hundred times. After he
16 read the patent 50 hours -- for 50 hours before he came here,
17 including on the day before his testimony, and how long did it
18 take him to kind of finally admit that he wouldn't -- he didn't
19 know, but he wouldn't be surprised?

20 And what did he say isn't in there? Any discussion of
21 trailing 1's.

22 What also did he deny? And this you take into account
23 in determining his credibility.

24 I asked him: Didn't Bjontegaard's proposal C028, that
25 was adapted by the JVT, proposed coding both trailing 1's and

1 non-zero coefficients, correct?

2 Yes.

3 And that proposal of adapted rather than the Nokia
4 proposal, which would have coded just non-zero coefficients,
5 correct?

6 I disagree.

7 Well, JVT was adopted at this meeting, correct?

8 I don't see that.

9 At the very bottom of -- just before the heading
10 CABAC.

11 Yes, it says here JVT was adopted, yes.

12 At your deposition, he said that Bjontegaard's
13 proposals, none of them found their way into the standard,
14 correct?

15 That's right from a technical point of view.

16 And you said none of your deposition -- none of your
17 proposals were adopted, that's what you told me at your
18 deposition, correct?

19 Yes, from a technical point of view.

20 Now, Dr. Madisetti relied on Mr. Richardson --
21 Dr. Richardson to do his simulation. Dr. Richardson wrote the
22 book on H.264 that he -- Dr. Madisetti relied on. And what did
23 Dr. Richardson say?

24 Yes, it was Dr. Bjontegaard's proposal, C028, that got
25 into the standard.

1 And I asked myself, why didn't Dr. Richardson come
2 here if he was the one who wrote the book on H.264? Why didn't
3 he come here and defend PanOptis's positions on this patent?

4 I think it's because probably even he couldn't have
5 supported what they argued here today -- this week.

6 Now, on non-infringement, we just don't believe that
7 the Court's construction means what they say it means. It
8 talks about a variable length code table that transforms into a
9 value that denotes the number of non-zero coefficients. And
10 yet they come down and say, when it talks more specifically
11 about the code in that table is supposed to be unique and maps
12 to one unique value. Well, that value in that same
13 construction means some totally different value. Because the
14 first one denotes non-zero coefficients. But the second value
15 can be anything they want.

16 And that's how they try to sweep in the standard.

17 And I've just shown you here a -- a comparison of the
18 table from the patent and the table from the standard. And
19 you've seen this before. I'm not going to belabor it. We
20 believe that there is no unique value of the number of non-zero
21 coefficients.

22 But if you agree with PanOptis and you say that this
23 claim covers the standard, then they've got a problem. They
24 can't have it both ways because Dr. Bjontegaard filed a
25 provisional application before the Panasonic patent. He gave a

1 proposal to the standards body, C028, and he later filed a
2 patent application.

3 And, yes, the patent application itself was filed
4 after the Panasonic '238 patent. But the law says that that
5 patent is entitled to the priority date of the provisional,
6 March 22nd, 2002, if the legal requirements are met, and they
7 were.

8 Now, let me go to that issue, and you can find this --
9 the relevant jury instruction at Page 17 where the Judge gives
10 you the two-part test that determines whether the '387
11 Bjontegaard patent is entitled to be treated as -- legally as
12 if it was filed on March 22nd.

13 And that test is essentially two parts. It's in your
14 jury instructions on Page 17.

15 But one of them is do the -- does the patent, the '387
16 patent disclose the same subject matter? And here we see the
17 '238 patent and the Bjontegaard '387 patent. And Dr. Burgess
18 criticized Dr. Schonfeld for comparing this. And Dr. Burgess
19 said this morning, he never showed you the provisional
20 application, but that's wrong.

21 Right after we went through this slide with
22 Dr. Schonfeld on direct, what did he put up? The provisional
23 application. And he pointed in the provisional application
24 where everything that he showed in the diagrams of the patent
25 were in the provisional. And that provisional application is

1 DX-211.

2 Picking a VLC table, doing it with coefficients,
3 non-zero coefficients and trailing 1's, he covered that. And
4 yet you were told this morning that we only showed you this
5 Figure 2 from the Bjontegaard patent. That's just not right.
6 That's attorney argument. But it's not right.

7 Now, I just want to make a comment right now. I
8 can't -- I'm -- when I sit down, I have to sit down, and
9 Mr. Stevenson, who is a distinguished lawyer and a great
10 arguer, gets to get up and say anything he wants because he
11 knows I can't get back up and respond to it. So I'm going to
12 trust you to take -- remember what the evidence was, and if
13 there's anymore whoppers told by Mr. Stevenson like Dr. Burgess
14 did, I'm going to trust you to sort fact from fiction and to
15 see through the smoke and mirrors and come up with the right
16 decision.

17 Now, here are the two questions that you'll find
18 relevant to the instruction on Page 17.

19 Is the subject matter relied on in the issued
20 Bjontegaard patent present in the provisional application?

21 THE COURT: You have five minutes remaining.

22 MR. HASLAM: Yes, it is.

23 Does the provisional application describe the
24 invention claimed in the Bjontegaard patent in such a manner
25 that a person could do -- do it without undue experimentation?

1 That's right.

2 Okay. As usual with me, I wind up taking more time
3 talking about things than -- than I probably should. So I'm
4 going to trust you on the obviousness.

5 The thing I want you to remember is our -- our experts
6 testified that every single limitation was in the com --
7 combined references that they talked about. And they
8 established why there was a reason or motivation to combine
9 those references.

10 And they didn't bring an expert back to say that the
11 testimony that all of the elements of the claims were in those
12 combined references. They didn't say that.

13 So I want to now talk about one -- one final thing,
14 and that's this 8.4 percent. Dr. Madisetti made up a table.
15 Doesn't exist. It's not a real table.

16 Dr. Schonfeld used one of the tables out of the
17 standard, and that's why his results, I think, are more
18 rational and more based in reality. He used an actual table
19 and not a made up table, and you get essentially a very small
20 increase.

21 This analysis is what drives the high value that
22 Dr. Akemann puts on the value of the '284 patent.

23 Now, I want to just skip forward now, and I want to
24 talk about damages.

25 This is a FRAND case. And the Judge told you that

1 PanOptis has the same FRAND obligations as Ericsson. And you
2 heard what Ericsson's view of the FRAND obligation was, a
3 single-digit percentage of the sales price.

4 The market rate should act in accordance with these
5 principles in a reasonable maximum aggregate royalty rate of 6
6 to 8 percent for handsets.

7 Dr. Akemann and Dr. Becker both did a FRAND analysis.
8 Dr. Akemann didn't want to come here and tell you what his
9 FRAND analysis is. But on this slide I show you. He comes up
10 with \$386,530.00 divided by 4 is \$96,000.00 a patent.

11 Dr. Becker, for his FRAND analysis, came up with
12 103,000 divided by 4 which is 25,000.

13 And somewhere in between there is probably the right
14 result for each of the patents.

15 Now, one thing to keep in mind is remember
16 Dr. Akemann's view of FRAND is there's no cap on what you can
17 ask for, even if it drives the royalty rate higher than the
18 price of the phone. He's not aware of any specific cap on the
19 FRAND obligations.

20 Now, on the '238 patent, that's different. Now,
21 Dr. Akemann gave you a \$7 million figure, but he also testified
22 that his other way of looking at it was 1.3 million, and both
23 of them were equally valid. But both of these numbers are
24 driven by Dr. -- Dr. Madisetti's use of a made up table to come
25 up with his 8.4 percent.

1 THE COURT: You have one minute remaining.

2 MR. HASLAM: Now, you were also -- you were asked --
3 Dr. Akemann was asked, if you used the 1.5 percent, which is
4 how the .13 that Dr. Schonfeld came up with would translate to,
5 and you took his \$7.7 million high number for the '238 patent,
6 you would end up with \$11,000.00 if you took out the 8.4
7 percent, which we don't believe is justified.

8 So in the final analysis, we believe that the total
9 damages would be \$103,000.00, approximately, for the LTE
10 patents, and \$22,000.00 for a total of \$125,955.00. And that's
11 not too far off of the \$11,000.00 that Dr. Akemann would come
12 up with for the '238 patent if he didn't use Dr. Madisetti's
13 test and 386,000 that he came up with using the FRAND.

14 THE COURT: Time's expired, counsel. Take a couple
15 sentences and finish up.

16 MR. HASLAM: I appreciate the Court's indulgence.

17 I just want to leave you with this. You are now going
18 to hear argument. You're the sole judges of the facts. I
19 believe this case is, as I said, about a failed negotiation.
20 Both parties bargained hard. I don't think there's any willful
21 infringement here. And as I've just gone through, I believe
22 there are valid defenses to both infringement and validity that
23 we've presented. And on validity, I think I can fairly say
24 unrebuted by anything other than attorney argument.

25 Thank you.

1 THE COURT: All right. Plaintiffs, you may now
2 present your final closing argument.

3 MR. STEVENSON: May it please the Court.

4 THE COURT: You may proceed.

5 MR. STEVENSON: Members of the jury, like any case of
6 trespass, the property owner is entitled to recover damages.
7 And Judge Gilstrap instructed you that to calculate damages,
8 you should award a reasonable royalty to PanOptis.

9 And the starting point for a reasonable royalty should
10 be the benefit that Huawei got from practicing -- from
11 trespassing upon PanOptis's property.

12 Our three technical experts to determine that
13 individually valued the efficiency gains from each one of the
14 asserted patents due to the inventions in this case, and it
15 adds up to \$22.00 a phone.

16 The inventions that are awarded patents confer a
17 benefit of \$22.00 a phone on your LTE phone.

18 And then Dr. Akemann, our damages expert, split that
19 benefit between the two parties, and his opinion was that
20 PanOptis would receive approximately \$4.00 of that -- of that
21 advantage, of the efficiency gain, and Huawei would leave --
22 would receive over 18 of that in terms of efficiency gains to
23 their products.

24 Now, given Huawei's trespass, one might in fairness
25 conclude that PanOptis ought to get every benefit that Huawei

1 received from its trespass.

2 But our expert, Dr. Akemann, he pushed back on that,
3 and he said in a hypothetical negotiation, the law requires a
4 splitting of the benefits, and in his view, when they were
5 split, Huawei would actually get the lion's share of them.

6 He concluded, as part of that, Huawei would cut a
7 better deal with PanOptis, so we, in his view, as a reasonable
8 royalty should get \$4.00 for the five patents per unit, a
9 little bit under, while Huawei is left with an \$18.00 gain in
10 value as a result of its trespass.

11 But that's not good enough for Huawei, and on the
12 other hand, it suggests that it should just pay pennies. And
13 their starting point is to look at my client's worldwide
14 portfolio offer, and there's a lot of problems with that
15 approach.

16 You know, when PanOptis made that offer a couple of
17 months ago, it was just trying to get a deal done, right?
18 You've got a 50-person company that's negotiating with the
19 No. 2 cell phone manufacturer in the world, and they went as
20 low as they could possibly go. And they tried to reach a deal
21 out of court. And today, that offer doesn't govern the
22 damages, not after we've gone to a verdict.

23 So then Huawei's damage's witnesses took that offer
24 and they averaged it across all the patents worldwide, and it
25 doesn't matter if it's 6,000 or 1,600 or it's a huge number of

1 patents.

2 And they applied that rate to the four radio patents
3 here, and it's a very un -- unfair approach to us, very unfair
4 for three reasons.

5 The first is it doesn't account for the individual
6 differences in -- in patent value, the -- the efficiency gains.
7 It just wipes that all out and ignores them.

8 Secondly, it doesn't recognize that U.S. patents are
9 the most valuable patents in the world. And despite what
10 Huawei's witnesses said, the U.S. patent system is the best in
11 the world, and U.S. patents are the most valuable patents in
12 the world. And we're asserting U.S. patents in this case.

13 And then he assumed that our patents were just average
14 across the portfolio. Now, common sense, right, does anyone
15 really think that if we're going to go into court against the
16 No. 2 cell phone manufacturer in the world that we're just
17 going to pull out average patents for -- from our portfolio?
18 No. We came to court with our good ones. We came to court
19 with the carving station patents, and they want to pay the
20 salad bar price.

21 The damages will we request in this case that you
22 award in response to Question No. 4 are for the '216 patent
23 \$102,742.00; for the '569, \$1,733,862.00; for the '284,
24 \$753,276.00; for the '293, \$246,844.00; and for the video
25 compression patent, the '238, \$7,716,841.00.

1 And that is based on a reasonable royalty, and you're
2 going to be asked to check a box there, lump sum or reasonable
3 royalty. It is based on a reasonable royalty. And what that
4 means is it's based on a unit by unit, how much of -- how much
5 of the -- how much of each unit worth comparison multiplied by
6 how many infringing sales there were.

7 Now, let me turn to the Question No. 2, and that's
8 willfulness. And I want to end with this because I think this
9 is what this case is really about.

10 Judge Gilstrap instructed you that willful
11 infringement is conscious, deliberate infringement. And here,
12 the evidence is overwhelming.

13 First, our first piece of evidence. During the case
14 two months ago, Huawei offered to license these patents as part
15 of a worldwide deal, and if you don't infringe a patent or if
16 that patent is invalid, you don't need a license.

17 But Huawei's offer was a very clear statement that
18 they know the patents are valid, they know they infringe them,
19 and that they are consciously doing it.

20 And then when the parties didn't reach agreement on
21 financial terms, what did Huawei do? At that point, they don't
22 have permission. They tried to get it, they weren't willing to
23 pay enough, they don't have permission, they didn't stop
24 selling in the United States.

25 That is conscious indifference to patent rights.

1 Second, in cross-examination of Huawei's corporate
2 representative, the person they brought to sit at the trial
3 table as their representative of their company, we asked that
4 very question, and we asked him in testimony: How many
5 essential patents do you think we have, somewhere between 20
6 and 200?

7 And remember, by definition, if a patent is essential,
8 their phones infringe it.

9 And so that means in order to practice the standard,
10 you would need a license to those patents, right?

11 Yes. If they're valid, yes.

12 And then he went on to say: Okay. Yes, sir, of those
13 million phones you import, they are all infringing on the
14 patents, are they not?

15 Well, if we actually implement those patents, then
16 yes, they -- and PanOptis proved that, then, yes, we would
17 infringe.

18 And they are implementing the standard. Huawei
19 stipulated to it, and it's in your juror notebook. They
20 infringe, and they know it.

21 And, in fact, Huawei didn't even try to contest the
22 validity of two of the patents. They didn't try to contest
23 infringement of two of the other patents.

24 And Judge Gilstrap isn't going to even have you
25 consider those issues in your deliberations because there's

1 just no contest there.

2 And the rest of Huawei's defenses, they're just very,
3 very weak. And that is why we didn't call witnesses in our
4 rebuttal case, because Huawei either didn't present defenses or
5 the defenses they presented were so weak we didn't need to
6 present any further evidence to prevail.

7 Now, for Huawei to suggest in this case that it has a
8 good faith belief just isn't believable. You know, in some
9 trials, there's legitimate differences of opinion, right? And
10 I don't begrudge a hard fought trial as long as everybody
11 follows the rules of court. But what that means is you come
12 into your court with your witnesses, you put out your position
13 honestly, and you trust a jury to listen and be fair and to get
14 it right.

15 And that's how we came to court.

16 Huawei's experts didn't follow the rules. And this
17 isn't just boilerplate, no. We showed you paragraph after
18 paragraph where it was actually substantive opinions, where
19 they switched out patent numbers, and that was the only
20 difference between the two to argue for individual patents.
21 That's not just boilerplate.

22 But the worst part about it is, the worst part, is the
23 witnesses lied about it on the stand.

24 We asked Dr. Bims: Are these your opinions?

25 He said he was proud of his report.

1 Do you stand by them? Did you write them?

2 Yes, they're my opinions. Yes, I wrote them.

3 But the truth is, then, when we compared the two
4 reports side-by-side, 18 pages of yellow identically. He then
5 came back and said he didn't personally write every word
6 despite what he had said before. The lawyers for Huawei wrote
7 them.

8 And then he said, instead of just fessing up, they did
9 submit text, which I reviewed to make sure it accurately
10 reflected my opinions.

11 And he -- he wouldn't even then say, yeah, they wrote
12 them, I admit. When it's clear as day.

13 But the -- the important question for -- for you,
14 members of the jury, is why would they do this? Why? Why not
15 just have the experts write their own reports?

16 I think the answer is they couldn't risk it. They
17 couldn't risk having these experts do their own work. They
18 were afraid of what the experts would say if they actually told
19 the truth about how weak these patents are.

20 THE COURT: Three minutes remaining.

21 MR. STEVENSON: And you have every right to ask
22 yourself if they scripted this, what else was scripted?

23 And then at the end of the case, we came to damages.
24 And I think that's really where you saw what Huawei was about.

25 Huawei suggested that it should only pay pennies for

1 these patents because to pay more would be non-economical.

2 And the truth is, though, this isn't just bargaining
3 hard, and it's not just PanOptis. Huawei doesn't pay royalties
4 to anybody.

5 So if look at, for instance, the pie chart that was
6 presented that has all the 4G patentholders, remember that?

7 All these companies have infringing -- have patents. 50
8 companies, 1,400 patents, and Huawei infringes them all. But
9 it only licenses four or five of the companies.

10 Then they wanted to give the example of the MPEG LA
11 pool. You'll remember that. A different group, 700 essential
12 H.264 patents. By definition, Huawei infringes them all. 50
13 companies, no licenses.

14 And worst yet, MPEG LA, one-stop shopping to get all
15 the patents signed up. And their experts wanted to tell you
16 that's the reasonable rate you should look at. And they
17 haven't even taken it.

18 And at the same time Huawei is ignoring industry wide
19 patents, they're spending enormous amounts to buy what they
20 call litigation quality patents. And they proudly tell you now
21 they own over 7,000 patents. But when we tried to sell them
22 our video compression patent and they weren't willing to pay
23 fair value, they turned around and said, well, it's invalid,
24 it's not infringed, and if it is infringed, \$22,000.00.

25 This continuing industry wide pattern of disrespect

1 for intellectual property rights just has to stop.

2 And rather than buying patents and spending enormous
3 amounts year after year to build a war chest --

4 THE COURT: One minute remaining.

5 MR. STEVENSON: -- I suggest Huawei should spend its
6 money compensating the victims of patent infringement like the
7 one in this case.

8 This is one case and one verdict that you will issue.
9 And we suggest you answer yes to the questions of willfulness.

10 I think Huawei needs to hear from you that their
11 attitudes towards patent rights is -- is unacceptable, and in
12 the future they need to pay fair royalties, and not just to
13 PanOptis but to all the essential patentholders. And you can
14 let Huawei know how you feel about this by answering Question
15 No. 2 on the verdict form.

16 Members of the jury, this is our final word -- our
17 final chance to speak with you. And on behalf of PanOptis, on
18 behalf of the members of our trial team, we thank you. We
19 thank you very much for your consideration of the case.

20 We know you've taken a big chunk of your lives out,
21 taken a whole week of your lives, and you've listened to our
22 dispute. You've listened to it patiently. You've -- you've
23 paid a lot of attention to all the evidence. We deeply
24 appreciate it, and we look forward to receiving your verdict.

25 Thank you.

1 MR. HASLAM: May we approach, Your Honor?

2 THE COURT: Approach the bench.

3 (Bench conference.)

4 MR. HASLAM: I believe the Court needs to give a
5 curative instruction. That closing argument was blatantly
6 saying you should punish Huawei for patents that are not in
7 this case and that you should find willful infringement because
8 they didn't take the MPEG LA, that they haven't taken licenses
9 from every one else in that pie chart. That is not what this
10 jury is supposed to decide on. It's the willful infringement
11 of these five patents, and he has just told them you find
12 willful infringement, and you find infringement, and you find a
13 lack of validity in these defenses --

14 THE COURT: Objection is overruled. Return to your
15 seats.

16 (Bench conference concluded.)

17 THE COURT: All right. Members of the jury, I'd like
18 to give you a few final instructions before you begin your
19 deliberations.

20 You must perform your duty as jurors without bias or
21 prejudice as to any party. The law does not permit you to be
22 controlled by sympathy, prejudice, or public opinion. All
23 parties expect that you will carefully and impartially consider
24 all the evidence and follow the law as I have given it to you
25 and reach a just verdict regardless of its consequences.

1 Answer each question in the verdict form from the
2 facts as you find them to be, following all the instructions
3 that the Court has given you.

4 Do not decide who you think should win and then answer
5 the questions to reach that result. Your answers and your
6 verdict, I remind you, must be unanimous.

7 You will notice on the verdict form that one part of
8 Question 1 and two parts of Question 3 have already been
9 answered by the Court. Those answers have been determined as a
10 matter of law by the Court, and you must accept them as
11 correct. However, you should not draw any inference from those
12 answers in your consideration of the rest of Question 1 and the
13 rest of Question 3.

14 In the event that your answer -- in the event that you
15 answer Question 4, you should treat the Court's answers no
16 differently from any answers you gave in Question 1 and
17 Question 3 in following the instructions set out in the verdict
18 form.

19 You should consider and decide this case as a dispute
20 between persons of equal standing in the community, of equal
21 worth, and holding the same or similar stations in life.

22 This is true in patent cases between corporations,
23 partnerships, or individuals. A patent owner is entitled to
24 protect his or her rights under the laws of the United States.
25 This includes bringing a suit in a United States District Court

1 for money damages for infringement.

2 The law recognizes no distinction among types of
3 parties. All corporations, partnerships, and other
4 organizations, regardless of their size, stand equal under the
5 law, and regardless of who owns them, and they must be treated
6 as equals.

7 When you retire to the jury room to deliberate on your
8 verdict, you're each going to receive a copy of these final
9 jury instructions to take with you and to review.

10 If you desire, during your deliberations, to review
11 any of the exhibits which the Court has admitted into evidence
12 during the course of the trial, then you should advise me by a
13 written note signed by your jury foreperson, delivered to the
14 Court Security Officer, and I'll then send that exhibit or
15 those exhibits to you.

16 Once you retire, you should first select your
17 foreperson and then conduct your deliberations.

18 If you recess during your deliberations, follow all the
19 instructions that the Court has given you about your conduct
20 during the trial.

21 After you have reached your verdict, your foreperson
22 is to fill in the verdict form reflecting your unanimous
23 answers to those questions. Do not reveal your answers until
24 such time as you are discharged by me, unless I direct you
25 otherwise. And you must never disclose to anyone, not even to

1 me, your numerical division on any unanswered question.

2 Any notes that you've taken during the course of the
3 trial are aids to your memory only. If your memory should
4 differ from your notes, you should rely on your memory and not
5 your notes. The notes are not evidence, ladies.

6 A juror who has not taken notes should rely on her own
7 independent recollection of the evidence and should not be
8 unduly influenced by the notes of other jurors.

9 Notes are not entitled to any greater weight than your
10 own recollection or impression, and that's why each juror
11 should consider those notes accordingly.

12 If you want to communicate with me at any time during
13 your deliberations, you should give a written message or a
14 question signed by your juror foreperson to the Court Security
15 Officer who will bring it to me. I'll then respond to you as
16 promptly as possible, either in writing or by having you
17 brought back into the courtroom where I can address you orally.

18 However, in any case, I will always first disclose to
19 the attorneys for the parties your question and my response
20 before I answer your question.

21 After you've reached a verdict and I've discharged you
22 from your position as jurors, you are not required to talk with
23 anyone about your service in this case unless the Court orders
24 otherwise.

25 However, at that time, you will be free to talk about

1 your jury service if you choose to. That decision at that time
2 will be up to you, and it will be your decision alone.

3 I'll now hand eight copies of these final jury
4 instructions and one clean copy of the verdict form to the
5 Court Security Officer to deliver to the jury.

6 Members of the jury, you may now retire to the jury
7 room to deliberate upon your verdict. We await your division.

8 COURT SECURITY OFFICER: All rise for the jury.

9 (Jury out.)

10 THE COURT: I'd like to see counsel at the respective
11 tables, trial tables, in chambers.

12 Pending either a question from the jury or the return
13 of a verdict, we stand in recess.

14 (Recess.)

15 (Jury out.)

16 COURT SECURITY OFFICER: All rise.

17 THE COURT: Be seated, please.

18 After the jury withdrew to the jury room to begin
19 their deliberations and the Court recessed, the Court met with
20 counsel in chambers. And at that time, the Court was advised
21 that the Defendants wished to withdraw certain defenses.
22 Therefore, I'm back on the record for the purpose of Defendants
23 enunciated into the record what -- the withdraw they intend to
24 make.

25 So I'll hear from Defendants' counsel, Mr. Young, in

1 that regard at this time.

2 MR. YOUNG: Thank you very much, Your Honor.

3 Huawei withdraw's its Affirmative Defenses 5, 6, 7, 8,
4 9, and 10, all of which are defenses to the enforceability of
5 the declared standard essential patents of PanOptis.

6 Huawei does not waive any objections that it may have
7 to the amount of any jury verdict that may relate to those
8 patents and does reserve the right to file appropriate JMOL
9 and/or new trial motions as to those issues. But the
10 affirmative defenses that I mentioned as to the enforceability
11 of the patents are withdrawn.

12 THE COURT: All right. Any question as to the
13 withdraw by the Defendants? Is that clear to Plaintiffs?

14 MR. STEVENSON: No questions.

15 THE COURT: All right. So noted in the record.

16 We stand in recess.

17 MR. YOUNG: Thank you.

18 (Recess.)

19 (Jury out.)

20 COURT SECURITY OFFICER: All rise.

21 THE COURT: Be seated, please.

22 Counsel, the Court's received the following note from
23 the jury. I'll read it as received.

24 Judge Gilstrap, 1, we would like to see the emails
25 between PanOptis and Huawei, please, in regards to the

1 negotiations starting at the beginning of negotiations to end
2 of negotiations.

3 2, we would like to see the Bjontegaard patent.

4 Thank you.

5 And it is signed by Debi Hall, as foreperson.

6 If I'm not mistaken, that would be Juror No. 6.

7 I'll mark this in the upper right-hand corner with a 1
8 for identification as the first note received from the jury
9 during this trial. I'll hand the original note to the
10 courtroom deputy to be included in the papers of this case.

11 Counsel, we've made a quick review of the exhibit list
12 with regard to the emails requested in Item 1. What I'm going
13 to do is go off the record and direct a representative of both
14 sides to come forward and meet with Ms. Lockhart and look at
15 what she's got identified.

16 Certainly, you know your exhibits, but if the two
17 parties and the courtroom deputy can put their heads together,
18 hopefully, you can agree what's an appropriate response
19 concerning the first request.

20 The second request as to that particular prior art
21 patent should be straight forward.

22 We'll go off the record at this time.

23 (Off the record discussion.)

24 THE COURT: Let's go back on the record.

25 All right. Counsel, having worked together in

1 response to what the jury's requested, I find that -- we'll
2 start with the second part of their request first, DX-212
3 appears to be the Bjontegaard patent.

4 Both sides agree that in response to the second part
5 of the jury's first note, I should send this back to them?

6 MR. STEVENSON: Agreed.

7 MR. HASLAM: Agreed.

8 THE COURT: Okay. All right. With regard to the
9 first portion of the note from the jury, I have the following,
10 which appear to be agreed-upon emails responsive to the first
11 request. Those would be PX-643, PX-679, PX-683, PX-714,
12 PX-719, PX-736, and PX-739.

13 Do both sides agree those are appropriate and
14 responsive to the jury's note?

15 MR. STEVENSON: Agreed.

16 MR. SMITH: Agreed.

17 THE COURT: All right. Then I have a remaining group
18 of exhibits -- I have a remaining group of exhibits that there
19 appears to be some lack of unanimity on as to whether they are
20 responsive to the note and whether or not they should go back.

21 I have DX-367, which appears to be the Huawei proposal
22 to PanOptis. I'm looking through it. I don't see anything
23 that indicates this is or is attached to an email.

24 Does either side have anything to indicate this is a
25 part of the emails requested?

1 MR. SMITH: Not within the record before the Court at
2 this point. Your Honor, the presentations that the Court's
3 referring to now that came from Huawei are -- are documents
4 that were provided. They were provided, I am advised by
5 Mr. Zhang, as attachments to email, if the Court wants to
6 examine Mr. Zhang to consider that, but the -- the documents
7 that we transmitted were extensive enough that they were not
8 emails, they were -- they were documents that were then
9 attached to emails, and the transmitting emails are not in
10 evidence.

11 But we would submit that the jury's note indicates
12 that they're looking for the communications with regard to
13 negotiations. Yes, they used the word "emails," but I don't
14 believe that that's a substantive distinction. And if the
15 Court sends the ones that are emails, those are all the
16 Plaintiffs' exhibits, and the only ones that aren't going back
17 are the four that are -- just happen to be Defendants'
18 exhibits.

19 THE COURT: It looks like, Mr. Smith, in the disputed
20 group, there are two Defendants' exhibits and two Plaintiffs'
21 exhibits. I have DX-367 and 380 and PX-738 and 737. Those
22 appear to be the four disputed exhibits.

23 MR. SMITH: I misspoke. I thought the other two
24 DX-368 and 372.

25 THE COURT: That's not what I have before me.

1 Well, the jury said we would like to see the emails
2 between PanOptis and Huawei. So my inclination is to send them
3 emails and anything that on its face clearly appears to have
4 been attached to an email.

5 But if these documents, PX-737 and 738 and DX-367 and
6 380, aren't indicative of emails and if you can't show me where
7 they were attached to one or more of the agreed upon emails
8 that are going to go back, then I think it goes beyond the
9 scope of what the jury's requested.

10 I mean, if I'm not going to hold the response to
11 emails, then the wheels to me seem to come off, and it could be
12 anything and everything that touches on this subject in the
13 most broad and generic sense, and I don't think that's -- I
14 don't think that's appropriate.

15 But if there's argument that these are somehow shown
16 to be attached to or tied to the agreed upon emails, I'm happy
17 to -- I'm happy to hear that.

18 MR. SMITH: Your Honor, it appears we missed one.
19 There is a DX-376, which is a letter from Huawei that
20 references on its face that it was by email.

21 THE COURT: I don't seem to have that.

22 MR. SMITH: And I apologize. I think we -- we did not
23 pull that.

24 THE COURT: What's that number again?

25 MR. SMITH: DX-376.

1 THE COURT: Can we pull that exhibit?

2 Okay. I've been handed DX-376. The first thing it
3 says is via email.

4 So I assume that goes in the agreed upon stack,
5 Mr. Stevenson?

6 MR. STEVENSON: Agreed.

7 THE COURT: Okay. That still leaves us with the four
8 that do not on their face show that they are either part and
9 parcel of an email transmission or an attachment to an email
10 transmission.

11 And, Mr. Smith, unless you've got something to tie it
12 to an email, I'm going to respond based on what the note says,
13 which is emails. I'm just very concerned that if I take your
14 proposal to broaden it to something beyond emails, there'll be
15 no parameters here at all.

16 MR. SMITH: Well, Your Honor, then our request would
17 be if the Court could ask the jury for clarification whether
18 they want the emails or if they want all correspondence between
19 the parties or documents exchanged between the parties.

20 THE COURT: I'm happy to tell them that I'm sending
21 them these exhibits. And I'm happy to tell them if these are
22 not sufficient and they want additional documents that have
23 been produced during the trial to send me another note and ask
24 for it. I'm happy to -- I'm not going to try and indicate to
25 them that this is all they will get.

1 But I'm not going to go beyond the face of the note
2 and send them things that are not emails or not direct
3 attachments to emails.

4 MR. SMITH: I understand the Court's ruling, Your
5 Honor.

6 THE COURT: Okay. So let's go off the record again,
7 and, Ms. Lockhart, if you'll pull up your form for a response
8 to the jury, I'll tell you what I want it to say, and then you
9 can type it and print it.

10 (Off the record discussion.)

11 THE COURT: Is there objection to that response from
12 Plaintiff or Defendant?

13 MR. STEVENSON: No objection.

14 MR. SMITH: No objection, other than those previously
15 stated, Your Honor.

16 THE COURT: All right. If you'll print that,
17 Ms. Lockhart, I will hand you the -- I have the exhibits to go
18 with it. If you'll print it and bring it to me, I'll sign it.
19 The four exhibits that were not either emails on their face or
20 shown to be attachments to emails, I'm going to hand back to
21 you.

22 And if you'll send one -- if you'll send one of my law
23 clerks to the printer, they can bring that back, because it
24 appears while we were responding to that note, another note
25 came in. So I have a second note.

1 And this note, which I'll mark as Item 2 in the upper
2 right-hand corner for identification, reads as follows:

3 Judge Gilstrap, we would like to see the VLC (sic)
4 table from the LTE standard.

5 Thank you, Debi Hall, foreperson.

6 I'll make some copies for counsel, and then I'll hand
7 the original to the courtroom deputy.

8 And we'll go off the record, and I'll give you an
9 opportunity to consult with each other hopefully to agree on
10 what the proper response should be.

11 We're off the record.

12 (Off the record discussion.)

13 THE COURT: All right. Counsel, in response to Jury
14 Note No. 2 having looked through the exhibits with you, I'm
15 proposing to send the following written response to the jury.
16 Response to Jury Note No. 2:

17 Members of the jury, in response to your note, I have
18 located what appears to be the VLC table from the H.264
19 standard. This relates to the '238 patent and is PX-112,
20 period.

21 If this is what you are requesting, please send me
22 another note confirming that you would like to see this. If
23 that is not what you are requesting, please send me another
24 note identifying more clearly what you would like the Court to
25 send to you.

1 Is there any objection to that from Plaintiff?

2 MR. STEVENSON: No objection.

3 THE COURT: Is there any objection to that from
4 Defendant?

5 MR. HASLAM: No.

6 THE COURT: Okay. I'll print it, sign it, and give it
7 to the Court Security Officer and direct him to return it to
8 the jury or deliver it to the jury.

9 And awaiting either another note or a verdict, we
10 stand in recess.

11 COURT SECURITY OFFICER: All rise.

12 (Recess.)

13 (Jury out.)

14 THE COURT: Be seated, please, counsel.

15 We've got a third note, which is as you might expect,
16 reads as follows:

17 Judge Gilstrap, yes, we would like to review VLC table
18 from H.264 standard, PX-112.

19 Thank you, Debi Hall, foreperson.

20 I'll mark that as Exhibit 3. And I'll hand the note
21 to the courtroom deputy.

22 And in response, I'll send the jury not only PX-112,
23 but a written note that says: Members of the jury, in response
24 to your note, attached is PX-112.

25 Any objection from Plaintiff?

1 MR. STEVENSON: No objection.

2 THE COURT: Any objection from Defendant?

3 MR. HASLAM: No.

4 THE COURT: All right. As soon as that can print,
5 I'll sign it, put it with the exhibit, which if you'll hand it
6 up to the courtroom deputy, Mr. Stevenson.

7 Then I'll send those into the jury by way of our Court
8 Security Officer.

9 Counsel, if you would like a copy for your complete
10 record, here's a copy of the third note for each side.

11 MR. SMITH: Thank you, Your Honor.

12 THE COURT: All right. I've signed the written
13 response. I'll place it with PX-112, hand it to the Court
14 Security Officer, direct that he deliver it to the jury.

15 And, counsel, pending another note or the return of a
16 verdict, we stand in recess.

17 MR. STEVENSON: Your Honor.

18 THE COURT: Yes.

19 MR. STEVENSON: I wanted to give you a brief status
20 update on the bench trial.

21 Mr. Young and I met and conferred. We have four
22 witnesses, he has one witness, Mr. Zhang. We think from our
23 side, with direct and cross, we only need about two hours.

24 THE COURT: Two hours total?

25 MR. STEVENSON: Two hours total for our case, direct

1 and cross.

2 THE COURT: And what for the Defendants' case
3 time-wise?

4 MR. YOUNG: Cross, we may need, depending on the
5 testimony, an equal, roughly equivalent amount time of
6 PanOptis's witnesses.

7 I gave Mr. Stevenson the name of our one witness
8 who -- whom the Court has already heard this week, Mr. Zhang.
9 I'll have to consider whether, based on what they say, there's
10 actually very much that we'll have him say. So that's a may
11 call rather than a will call.

12 THE COURT: So, clearly, we ought to be able to do
13 this in four or five hours?

14 MR. STEVENSON: Clearly.

15 MR. YOUNG: I think that's fair, Your Honor.

16 THE COURT: Okay. I'll still be looking for your
17 letter briefs by the end of the day as to whether or not
18 there'll be a bench trial at all, and if there is, then we'll
19 proceed on the assumption that it will take that amount of
20 time. If it is, we'll start it at 8:00 o'clock Monday. But
21 I'll let you know after I review your briefing.

22 MR. STEVENSON: Thank you.

23 MR. YOUNG: Thank you.

24 THE COURT: Thank you.

25 We're in recess.

1 (Recess.)

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Be seated, please.

5 Counsel, we've received a fourth note from the jury.

6 I've previously given you a Xerox note of this in chambers or a
7 Xerox copy of this in chambers. I'll mark the original as Item
8 4 in the upper left-hand corner and deliver it to the courtroom
9 deputy.

10 I've prepared a response to this note. Let me read
11 the note into the record, and then I will give you my proposed
12 response. The note reads as follows:

13 Judge Gilstrap, may we see further discussion evidence
14 regarding PX-643 and Huawei's question of the initial validity
15 of the '283 patent (sic)?

16 Thank you, Debi Hall, foreperson.

17 I'll hand the original note back to the courtroom
18 deputy.

19 In response, counsel, I've prepared the following, and
20 I have a hard copy if one representative of each side would
21 like to approach so you can read along with me. I believe this
22 is appropriate, but I want to go over it with you and see if
23 you concur.

24 This response to the jury's note would read as
25 follows:

1 Members of the jury, the Court, as I have previously
2 told you, will not be able to send you a transcript of any
3 portion of the trial testimony. This is why I have instructed
4 you that you must rely on your memories. I am able to send
5 specific exhibits to you when requested. And I am able to
6 answer questions on the law if they arise. However, in
7 response to this message from you, you must rely upon your
8 memories of the testimony and evidence presented during the
9 trial.

10 Do either Plaintiff or Defendant have any objection to
11 the Court sending this written response to the jury regarding
12 Note No. 4?

13 MR. STEVENSON: No objection.

14 MR. SMITH: No objection.

15 THE COURT: Then I'll sign the written response and
16 hand it to the courtroom -- Court Security Officer to deliver
17 to the jury.

18 And I'll hand a signed duplicate to the courtroom
19 deputy for her files.

20 And with that, awaiting either another note or a
21 return of the verdict, we stand in recess.

22 (Recess.)

23 (Jury out.)

24 COURT SECURITY OFFICER: All rise.

25 THE COURT: Be seated, please.

1 Counsel, we have a fifth note from the jury.

2 I'll mark it as Item 5, and I'll read it to you, and
3 then I'll hand the original to the courtroom deputy.

4 Judge Gilstrap, we need a new copy of Page 4, Question
5 1, and a new copy of Page 5, Question 2.

6 Signed Debi Hall, foreperson.

7 I would propose to send them a completely clean copy
8 of the verdict form.

9 Anybody have any objection to that?

10 MR. STEVENSON: No objection.

11 MR. SMITH: No objection.

12 THE COURT: All right. Ms. Denton, if you'll take --
13 rather than send in a written reply, just them a clean copy of
14 the verdict form.

15 And I'll hand the note to the courtroom deputy.

16 Don't know why they need a new one, but it indicates
17 we might be getting close.

18 We stand in recess.

19 (Recess.)

20 (Jury out.)

21 COURT SECURITY OFFICER: All rise.

22 THE COURT: Be seated, please.

23 Ms. Denton, would you bring in the jury, please?

24 (Jury in.)

25 THE COURT: Please be seated.

1 Members of the jury, it looks to me that you've been
2 deliberating for about five hours since just after lunch or
3 after noon today.

4 It's 5:20, more or less by my clock. It's a Friday
5 evening. I want you to know that you should continue to
6 deliberate, if necessary, up until an hour from now. But if by
7 6:15 you've not reached a verdict, then you should recess for
8 the evening and come back tomorrow morning at 8:30 a.m. and
9 continue your deliberations then.

10 If you reach a verdict before 6:15, let the Court
11 Security Officer know. If you don't, I'm not prepared to stay
12 up here with my staff all hours of the night on a Friday night,
13 and we'll reconvene and let you continue your deliberations at
14 8:30 tomorrow morning.

15 So with that, continue to work, and we'll see where we
16 are if and when we're still where we are right now at 6:15.

17 But those are my instructions to you, and with that,
18 you're excused.

19 COURT SECURITY OFFICER: All rise.

20 (Jury out.)

21 THE COURT: The Court stands in recess.

22 COURT SECURITY OFFICER: All rise.

23 (Recess.)

24 (Jury out.)

25 COURT SECURITY OFFICER: All rise.

1 THE COURT: Be seated, please.

2 Counsel, we have received another note.

3 I'll mark it as No. 5 (sic), I believe, for
4 identification, and after I've read it, I will hand it to the
5 courtroom deputy.

6 Judge Gilstrap, we would like to review Dr. Vijay
7 Madisetti and Dr. Dan Schonfeld's reports.

8 Thank you, Debi Hall, foreperson.

9 I've prepared the following response that I'd like to
10 read to counsel and get your comments on before I return it to
11 the jury:

12 Members of the jury, in response to your request to
13 review the reports of Dr. Madisetti and Dr. Schonfeld, their
14 reports are not evidence in the case, and I cannot send them to
15 you. However, the testimony of these two witnesses is
16 evidence, and you should rely on your memories regarding their
17 testimony as to their reports and the subject matter contained
18 therein.

19 Any objections to that response from Plaintiffs?

20 MR. BAXTER: No, Your Honor.

21 THE COURT: Any objection from Defendants?

22 MR. HASLAM: No, Your Honor.

23 THE COURT: Then I'll sign the written response to the
24 jury, and I'm told this is Note 6. I'll correct the
25 identification on the original as I hand it to the courtroom

1 deputy. I'll sign the written response. I'll hand it to the
2 Courtroom Security Officer, and ask her to deliver it to the
3 members of the jury.

4 I'll also hand a duplicate of the same to the
5 courtroom deputy for her files.

6 And with that, counsel, we stand in recess.

7 COURT SECURITY OFFICER: All rise.

8 (Recess.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

9 /S/ Shelly Holmes _____ 8/24/2018
10 SHELLY HOLMES, CSR-TCRR Date
11 OFFICIAL REPORTER
12 State of Texas No.: 7804
13 Expiration Date: 12/31/18